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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 61

DAVID S. ALBERTS, APPELLANT,

vs.

STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, LOS ANGELES COUNTY, APPELLATE DEPARTMENT

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[fol. 1] [File endorsement omitted]

IN THE MUNICIPAL COURT OF BEVERLY HILLS JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

CR. A3350

Case No. 2360

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

v.

DAVID S. ALBERTS and VIOLET E. ALBERTS, Defendants

COMPLAINT—MISDEMEANOR—Filed September 6, 1955

Personally appeared before me the undersigned who, first being duly sworn, complains and says: Frank W. Bridges.

That on or about the 25th day of February, 1955, at and in the Beverly Hills Judicial District, in the County of Los Angeles, State of California, a misdemeanor, to wit, Violation of Subdivision 3 of Section 311 of the Penal Code of the State of California, was committed by David S. Alberts and Violet E. Alberts, (whose true name to affiant is unknown), who at the time and place last aforesaid did willfully, unlawfully and lewdly, in the County of Los Angeles, write, compose, stereotype, print, publish, sell, distribute, keep for sale and exhibit obscene and indecent writings, papers and books; and design, copy, draw, engrave, paint and otherwise prepare obscene and indecent pictures and prints; and mold, cut, cast and otherwise make obscene and indecent figures.

3-1-55—Warrants issued to Sheriff's Vice Detail—Bail set at $1,000 each.

3-8-55—Issued subpoenas on part of defendants.

3-17-55—Subpoenas issued.

3-2-55—U. S. Fidelity & Guaranty #A-12108 (Violet E. Alberts).

3-2-55—U. S. Fidelity & Guaranty #A-12107 (David S. Alberts) both bonds for $1,000.

[fol. 2] Count II

For a further and separate cause of complaint, being a different offense of the same class of crimes and offenses as the charge set forth herein, complainant further complains and says: That on or about the 25th day of Feb., 1955, at and in the Beverly Hills Judicial District, County of Los Angeles, State of California, a misdemeanor, to wit, Violation of Section 311, Subdivision 4 of the Penal Code of the State of California, was committed by David S. Alberts and Violet E. Alberts (whose true name to affiant is unknown) who, at the time and place last aforesaid, did willfully, unlawfully and lewdly, in the County of Los Angeles, write, compose and publish a notice and advertisement of an obscene and indecent writing, paper, book, picture, print and figure.

[fol. 3] Count III

For a further and separate cause of complaint, being a different offense of the same class of crimes and offenses as the charges set forth herein, complainant further complains and says: That on or about the 25th day of Feb., 1955, at and in the Beverly Hills Judicial District, County of Los Angeles, State of California, a misdemeanor, to wit, Violation of Section 311, Subdivision 5 of the Penal Code of the State of California, was committed by David S. Alberts and Violet E. Alberts (whose true name to affiant is unknown) who, at the time and place last aforesaid, did willfully, unlawfully and lewdly produce, prepare, sell, distribute, keep for sale, exhibit, buy, rent, use, keep and maintain recordings and transcriptions used and intended to be used in producing and reproducing a lewd and obscene song, ballad and words.

[fol. 4] Count IV

For a further and separate cause of complaint, being a different offense of the same class of crimes and offenses as the charges set forth herein, complainant further complains and says: That on or about the 25th day of Feb., 1955, at and in the Beverly Hills Judicial District, County of Los Angeles, State of California, a misdemeanor, to wit, Viola-

tion of Section 647, Subdivision 5 of the Penal Code of the State of California, was committed by David S. Alberts and Violet E. Alberts (whose true name to affiant is unknown) who, at the time and place last aforesaid, were willfully and unlawfully lewd and dissolute persons.

Said complainant therefore prays that a warrant may be issued for the arrest of said defendants who may then be dealt with according to law.

Subscribed and sworn to before me on the 1st of March, 1955.

Frank W. Bridges, Dy Kibley, by C. Kuebel.
Arresting officer employed by —— ——.

Witnesses

Frank W. Bridges, Sheriff's Vi.
Rusty Brooks, 5446 Lemon Grove—HO 94349.
H. B. Cains, 8731 Santa Monica Blvd—BR 25025.
Sgt. P. Q. Barnes, LAPD—AVI.
Sgts. Gerald Holland and N. E. Riley; LAPD—Hwd Vi.
Robert Wallace and Russell Gardner; Sheriff's Vi.
Richard O. Collins, LAPD—AVI.
Tanagra, Regas, 6144 Linforth—HO 38488.

[fol. 5] In the Municipal Court of Beverly Hills Judicial District County of Los Angeles, State of California

Transcript of Docket (Criminal)

Case No. M-2360

The People of the State of California

vs.

David S. Alberts and Violet E. Alberts

David Alberts, U. S. Fidelity $1000.00. Bail Posted, Date: Bond No. 3-2-55, Receipt A-12107.

Violet Alberts, U. S. Fidelity, $1000.00. Bail Posted, Date: Bond No. 3-2-55, Receipt A-12108.

Date/s of offense/s 2-25-55.

3-1-55. Complaint filed, sworn to by Frank W. Bridges (Sheriff's Vice), charging Defendant/s with having com-

mitted in said Judicial District the Misdemeanor offense/s of: Violation of Section/s Count 1-311.3 Count 2-311.4 Count 3-311.5 & Count 4-647.5 all penal code. Warrant of Arrest issued to Sheriff's Vice Detail for each defendant. Bail set at $1,000.00 each.

3-3-55. Defendants in Court with attorney R. Maddox for arraignment. Ask continuance for arraignment. Set for 3-17-55 at 9 A.M. At request of attorney Maddox, hearing under penal code section 1539, set for 3-9-55 at 2 P.M.

3-8-55. Subpoenas issued on part of defendants for hearing on 3-9-55 at 2 P.M.

3-9-55. Defendants in Court on hearing under 1539 penal code. People represented by D/D/A Nelson. Defendants represented by attorney Maddox. Matter regarding section 1539 penal code off calendar.

3-17-55. Both defendants in Court represented by attorney R. Maddox. Jury waived and reading of complaint waived. Both defendants plead not guilty and ask for COURT TRIAL. Set for April 28, 1955 at 9:30 A.M. Bail to continue.

3-17-55. Subpoenas issued.

4-21-55. Defendants in Court with attorney Maddox. Move for continuance. Defendants and attorney waive statutory rights to time of trial. Case continued to 6-9-1955 at 9:30 A.M. Bail to remain as posted.

4-22-55. Vice Detail notified to advise witnesses not to appear on 4-28-55 at 9:30 A.M.

4-22-55. New subpoenas issued.

6-9-55. Cause called for Court Trial. People represented by D/D/A Nelson. Defendants in Court represented by attorney C. R. Maddox. Court reporter at request of defense attorney Maddox (John W. Lapointe). Peoples witness sworn: 1—Frank W. Bridges, 2—Russell Gardner, 3—Hank B. Cains, 4—Tanagra Regas, 5—Robert J. Wallace, 6—Robert A. Wood.

Peoples exhibits filed: 1—Bundle of booklets, 2—Advertising Brochure, 3—Sales Brochure, 4—(Pictures Tina's Torture), 5—8 large booklets, 6—20 packets of pictures, 7—Three Small packet labels, 8—Advertising brochure, 9—Six bound books, 10—Ten issues of magazine, 11—Book & yellow 12—Box of stero 13—Envelope of negative, 14—Sheets of

photos, 15—Envelope of negative 6 girls, 16—Envelopes, 6 negatives to page, 17—Letter 18—(Brochure) 19—(Picture, 20—(4x5 negatives) 21—Four books, 22—(1 book), 23—(4x5 negative).

Motion of defense for acquittal. Recess to June 10, 1955. [fol. 6] 6-10-55. All parties present. Court finds as to count 3 & 4—no conviction could be had, therefore dismissal of counts 3 & 4. Motion denied as to counts 1 & 2. Defendant's witness sworn: 11—Stanley H. Fleishman, 2—David S. Alberts, 3—Mrs. D. Alberts. Defendant David S. Alberts found guilty on counts 1 & 2. Sentence set for June 24, 1955 at 9 A.M. Bail to continue as posted. Defendant Violet Alberts found not guilty on count 1 & 2. (Her) bail exonerated.

6-24-55. Defendant in Court with attorney Maddox. People represented by D/D/A Nelson. Motion by defendant's attorney for new trial. Motion Denied. Motion by defendant's attorney that the matter be referred to County Probation. Motion Denied: Defendant sentenced on counts 1 & 2. Count 1: Sentence suspended and defendant placed on summary probation on the following terms and conditions: 1—Defendant not to violate section 311 P. C. 2—Defendant to pay a fine of $500.00 or serve one day County Jail for each $10.00 unpaid, and serve 60 days in County jail. Count 2: Sentence suspended & defendant placed on summary probation on the following terms and conditions: 1—Defendant not to further violate penal code 311-4 or any subsection thereof or have in his possession any obscene or indecent literature or pictures in two years. Bail exonerated. Written notice of appeal filed. Oral notice of appeal filed in open Court. Bail $1,000.00 on appeal bond. All business records to be returned to defendant. All obscene matter to be confiscated and destroyed, that are now held by People.

6-28-55. Affidavit and order extending time to file statement on appeal filed by attorney.

7-12-55. Defendant's amended Statement On Appeal filed.

7-19-55. Original and copy of reporter's transcript on appeal filed.

7-20-55. Notice of filing of transcript filed.

[fol. 7] Clerk's Certificate to Transcript of Docket (omitted in Printing).

[fol. 8] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

No. M-2360

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respond

vs.

DAVID S. ALBERTS, Defendant and Appellant

DEFENDANT'S AMENDED STATEMENT ON APPEAL—

Filed July 12, 1955

Now comes the appellant, David S. Alberts, defendant in the Municipal Court of the Beverly Hills Judicial District proceeding No. M-2360, and sets forth his statement on appeal as follows:

That heretofore on the 1st day of March, 1955, the above named appellant, and one Violet E. Alberts, as defendants, were jointly charged in a misdemeanor complaint with violations of the Penal Code as follows:

In Count 1 with the violation of subdivision 3 of Section 311, in Count 2 with violation of subdivision 4 of Section 311, in Count 3 with violation of subdivision 5 of Section 311, and in Count 4 with violation of subdivision 5 of Section 647.

That said violations were alleged to have been committed on the 25th day of February in the County of Los Angeles, State of California.

That thereafter the defendants were duly arraigned, expressly waived a trial by jury and after due proceedings had said trial was had on the 9th and 10th days of June, [fol. 9] 1955, in Division 1 of the Municipal Court of the Beverly Hills Judicial District, the Honorable Charles J.

Griffin, Judge presiding, the defendants being represented by C. Richard Maddox and the People being represented by James Nelson, deputy district attorney.

People's Case—Introduction of Evidence

The People called as witnesses Deputy Sheriffs of the County of Los Angeles and Police Officers of the Vice Detail of the City of Los Angeles, who testified in substance that pursuant to search warrants certain photographs, books and writings were found in various establishments, including the residence and places of business of defendants.

Defendants' Motion for Acquittal

Upon the conclusion of the People's case the defense moved the Court to acquit said defendants on the grounds that the corpus delecti of the offenses charged had not been established and after proceedings and argument the Court granted the defendants' motion as to Counts 3 and 4 of the complaint.

Defendants' Case

The defendants called Stanley Fleishman, a member of the law firm of Brock, Easton and Fleishman, who is a member of the California and New York Bars. Preliminary questions were asked the witness concerning his qualifications as a specialist in practicing before the Postal Department, and in Federal proceedings. Objections were made by the prosecution as to questions pertaining to legal counsel and advice given said defendants. Said objections were sustained by the Court.

Offer of Proof by Defendants

The defense thereupon made an offer of proof indicating that the testimony of the witness Fleishman would substantiate defendants' contention that they were not acting lewdly as charged under the provisions of Section 311 of the Penal Code. Said offer of proof indicated that the wit- [fol. 10] ness Fleishman had represented defendants in numerous Federal Court proceedings relating to much of the material and advertisements introduced in evidence in this

proceeding and that the Federal Courts had ruled that much of said material and advertisements were not obscene. Said offer of proof further included the representation that said defendants would testify that they had relied upon the advice and counsel of the witness Fleishman and that accordingly were acting lawfully and not lewdly or wantonly in violation of Section 311 of the Penal Code. Said offer of proof was refused by the Court and the defense called the defendants as witnesses on their own behalf.

Defense

The defendant David S. Alberts, being one of the defendants called, testified in substance that he was engaged in the mail order business and that he had not acted lewdly in doing any of the acts charged against him; that said defendant's statements on direct examination were limited by ruling of the Court to the direct question as to whether or not defendant had acted lewdly in the sale, distribution or keeping for sale, etc., of the merchandise heretofore held by the Court to be obscene.

Objections were sustained to questions asked the defendant as to his reliance upon counsel and facts surrounding the possession, sale and intent with which the defendant carried on the sale and distribution of his mail order business.

Upon cross-examination the People were permitted to question defendant concerning his prior court experiences, irrespective of the fact that the People had objected to the same questions asked him on direct examination, which were sustained at the time.

Judgment of the Court

The Court rendered judgment for the People and against the defendant David S. Alberts on Counts 1 and 2 of the complaint. The Court rendered judgment against the Peo-
[fol. 11] ple and for the defendant Violet E. Alberts, and said defendant was thereupon acquitted on all charges and her bond exonerated.

Motion for a New Trial

That thereafter on June 14, 1955, the defendant David S. Alberts by written notice of motion advised the Court and the People that on the 24th day of June, 1955, that said defendant would move the Court for a new trial on the grounds set forth in Section 1181 of the Penal Code, towit, subdivisions 5 and 6; that included with said written notice of motion for a new trial was a memorandum of grounds and points and authorities.

That thereafter on the 24th day of June, 1955, the defendant orally made a motion for a new trial, supplemented by said written notice, and the Court after due proceedings denied said motion.

Sentence

The defendant requested the Court to file an application for probation and upon order of Court said request and motion was denied and the defendant was thereupon sentenced by order of Court.

Grounds of Appeal

That the Court committed reversible error as follows: That although the Court found that certain exhibits were in fact obscene before the defendant could be found guilty in violation of Section 311 of the Penal Code it was necessary that the Court find that defendant acted lewdly in the selling, distribution, etc., of said obscene material.

1. That the Court precluded the defendant from introducing evidence to show his state of mind on said issue of specific intent.

2. That defendant was limited in his direct examination to conclusions that he was not acting lewdly.

[fol. 12] 3. That the rights of defendant were prejudiced in that the People were permitted on cross-examination to elicit information concerning previous court experiences and background of defendant, although the People had made objections, which were sustained, to the defendant being questioned upon the same subject matter on direct examination.

4. That the defendant was denied the right to state ulti-

mate facts as to the basis of his conclusion, opinion and attitude as to why he did not act lewdly as provided for in Section 311 of the Penal Code.

5. That the defendant was denied the right to produce evidence by the witness Fleishman in corroboration of his lack of specific intent to act lewdly in violation of Section 311 of the Penal Code.

6. That said evidence that the Court erred in excluding, and such errors and grounds as heretofore set forth, constituted reversible error in that said defendant was presented from introducing evidence material to his defense.

7. That the evidence was insufficient to show that any of the matter or thing was obscene or indecent or that the defendant acted wilfully and lewdly.

8. That the evidence was insufficient to show that the defendant composed or published any notice or advertisement of any obscene writing, paper, book, picture, print or figure.

9. Penal Code, Section 311, subdivisions 3 and 4 under which defendant was convicted is unconstitutional on its face, violating as it does the First and Fifth Amendments of the United States Constitution and Article I, Sections 9 and 13 of the California Constitution.

10. Penal Code, Section 11, subdivisions 3 and 4 under which defendant was convicted is unconstitutional as applied to defendant herein, violating as it does the First and [fol. 13] Fifth Amendments to the United States Constitution and Article I, Sections 9 and 13 of the California Constitution.

11. Defendant was denied his constitutional rights guaranteed by the Fifth and Sixth Amendments of the United States Constitution and Article I, Section 13 of the California Constitution in that he was denied due process of law and was not informed of the nature and cause against him.

12. Penal Code, Section 311, subdivisions 3 and 4 as applied to the defendant in this case is void since the Federal Government has legislated fully in the area of mailing and advertising obscene matter and the Federal Government has preempted the field.

Settlement of Transcript

To the Honorable Charles J. Griffin, Judge Presiding, and James Nelson, Deputy District Attorney of Los Angeles County:

You, and each of you, will please take notice that the appellant will file and make a part hereof as provided by law, and rule of Court, a transcript of the proceedings and evidence reported in said proceedings, pertaining to the reversible errors complained of and heretofore alleged in defendant's statement on appeal. Said transcript will be filed on or before July 26, 1955.

Dated: July 12, 1955.

C. Richard Maddox, Stanley Fleishman, By Stanley Fleishman, Attorneys for Defendant and Appellant.

Order Allowing and Settling Defendant's Statement on Appeal

I hereby certify that the foregoing Statement on Appeal entitled "Defendant's Amended Statement on Appeal", consisting of six pages is correct and the same is settled and allowed as the Settled Statement on Appeal together with the Reporter's transcript on file herein.

Dated August 19th, 1955.

Charles J. Griffin, Judge.

I concur with the above certification.

Dated August 22, 1955.

James F. Nelson, Dep. Dist. Atty.

[fols. 14-71] Affidavit of Service by Mail—(Omitted in Printing)

[fol. 72] [File endorsement omitted]

LETTER TRANSMITTING ANALYSIS OF EXHIBITS—Filed November 22, 1953

S. Ernest Roll, District Attorney
George W. Kemp, Chief Deputy
C. H. Ebbets, Chief, Bureau of Investigation

County of Los Angeles
Office of the District Attorney
600 Hall of Justice
Los Angeles 12, California

Mutual 2141

November 18, 1953.

Appellate Department
Superior Court
1605 City Hall
Los Angeles 12, California

Gentlemen:

Pursuant to this court's request on oral argument we are enclosing a copy of an "Analysis of Exhibits" prepared by Deputy District Attorney Fred N. Whichello. This analysis was originally prepared primarily for our own use in organizing and keping track of the numerous exhibits, and was therefore not intended to evaluate all of the evidence. Also our opinion as to what is obscene, very obscene, etc. is not intended to be exhaustive. However, we do hope that it may be of some aid and assistance in the court's analysis and organization of the numerous exhibits and voluminous record in this case.

We would also like to call the court's attention to the case of People v. Pickwick Book Shop Inc., et al., Cr. A. 2314, decided by this court. Through inadvertence we failed to cite this case in our brief but feel that it may be of some assistance in this matter.

A copy of the foregoing and of the analysis is being sent to Mr. Stanley Fleishman, attorney for defendants and appellants.

Sincerely, Lewis Watnick, Deputy District Attorney, Appellate Division.

LW:ml.

[fol. 73] ANALYSIS OF EXHIBITS

Exhibit No.	Description and Comment	Advertised In	Degree of Obscenity and Reference
1	Julius Haldeman Books—not obscene fraud	Ex. 3	
2	Advertising Brochure		
3	" " yellow paper		
4	"Tina's Torture"—cartoon strips	Ex. 2	@ moderately obscene
5	9 books—soft covers:		
	"Petting as an Erotic Exercise"	Ex. 3 No. 15	(See pp. 17, 19) X very obscene
	"The Picture of Conjugal Love"	Ex. 3 No. 13	X very obscene
	"Female Homosexuals"	Ex. 3 No. 17	
	"Questions and Answers about Oragenital Contacts"	Ex. 3 No. 24	X very obscene (See p. 24)
	"Male Homosexuals Tell Their Stories"	Ex. 3 No. 16	
	"The Business Side of the Oldest Business"	No	
	"Bestiality and the Law"	Ex. 3 No. 5	
	"Bestiality in Ancient and Modern Times"	Ex. 3 No. 6	
	"Wm. Heirens Notorious Sex Maniac"	No	
6	20 packets of photos—all spanking etc.	Ex. 2	@ moderately obscene
7	3 packets labels (reflect commercial activity)		
8	Advertising Brochure		

[fol. 74]

9	5 books—hard covers:		
	"The Pleasures of the Torture Chamber" "To Beg (etc.) London Prostitute"		@ moderately obscene
(9)	"Witch on Wheels"		X very obscene (See p. 105 Tr. Judge's comment re p. 17)
	"She Made it Pay"		X very obscene (See p. 106 Tr. Judge's comment re pp. 50–53)
	"Snow Job"		(See Judge's comment p. 106 Tr.)
10	10 copies "Good Times" magazine		(See Judge's comment p. 107 Tr.)
11	"Sword of Desire"		X very obscene (See Judge's comment p. 107 Tr.)
12	Stereos and viewer	Ex. 2	X very obscene (See Judge's comment p. 108 Tr.)
13	Negatives and cartoons	Ex. 2	@ moderately obscene
14	Photographs—spanking, hair pulling	Ex. 2	@ moderately obscene
15	Negatives and photos—spanking, hair-pulling		@ moderately obscene
16	" "		@ moderately obscene
17	Letter from mother of 8 yr. old boy		
18	Same as Ex. 3		

Exhibit No	Description and Comment	Advertised In	Degree of obscenity and Reference
19	8 x 10 photo nude		
20	negative photo 4 x 5		
21	4 booklets—3 spanking, etc. 1 re chastity belts		@ very obscene
22	Booklet "Unique"—whipping		@ very obscene
23	4 x 5 negative—nude		

Key To Symbols: X—heterosexual
@—sado-masochistic

Note: The above is only a very partial analysis of the exhibits. This analysis was originally made only for the benefit of the District Attorney's Office, and should not be construed as being a thorough analysis of the evidence introduced in the matter. In all probability there are other passages and exhibits introduced herein that might be considered obscene which were not checked in the analysis.

[fol. 75] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, APPELLATE DEPARTMENT

No. CR A3350

ANSWER TO APPELLEE'S "ANALYSIS OF EXHIBITS"—Filed November 23, 1955

Of the hundreds or thousands of items taken from Appellant on February 25, 1955, Appellee presumably introduced the most lurid. If we assume that the District Attorney who tried the case believed that each of the items introduced as an exhibit was obscene we find that the District Attorney's office has apparently changed its mind and now according to the analysis believes that the following items introduced as obscene are not obscene after all:

(1) "Ballad of a Nun and Other People"—Exhibit 1.
(2) "Homosexual Life"—Exhibit 1.
(3) "Lives of the Courtesans"—Exhibit 1.
(4) "How to be Married Though Happy or How to be Happy Though Married"—Exhibit 1.
(5) "The Prostitute and her Lover"—Exhibit 1.
(6) "Love Affair of a Priest and a Nun"—Exhibit 1.
[fol. 76] (7) "Amorous Details of the Monks"—Exhibit 1.
(8) "Wild Women of Broadway"—Exhibit 1.

(9) "Strange Marriage Customs"—Exhibit 1.
(10) "Confessions of a Minister's Daughter"—Exhibit 1.
(11) "The Fleece of Gold"—Exhibit 1.
(12) "Female Homosexuals"—Exhibit 5.
(13) "Male Homosexuals Tell Their Stories"—Exhibit 5.
(14) "The Business Side of the Oldest Business"—Exhibit 5.
(15) "Bestiality and the Law"—Exhibit 5.
(16) "Bestiality in Ancient and Modern Times"—Exhibit 5.
(17) "Wm. Heirens, Notorious Sex Maniac"—Exhibit 5.
(18) "To Beg, etc., London Prostitute"—Exhibit 9.
(19) "Snow Job"—Exhibit 9.
(20) 10 copies "Good Time" magazines—Exhibit 10.
(21) 8 x 10 photo, nude—Exhibit 19.
(22) Negative photo 4 x 5—Exhibit 20.
(23) 4 x 5 negative, nude—Exhibit 23.

The only items which were thought to be "very obscene" by the District Attorney and which were clearly kept for distribution by mail are three books found in Exhibit 5. As we previously pointed out, the Trial Judge found the booklets composing Exhibit 5 to be not obscene (Rep. Tr. p. 104, lines 4-10). The suggestion by the District Attorney made on oral argument that if the Trial Judge found them to be not obscene it was only because he did not read them does not help the Appellee's position. The Appellee asks this Court to affirm a judgment of a trial court arguing that the Trial Judge as the "constitutional arbiter of the facts" (Appellee's Opening Brief, p. 16, lines 15-16) must be given great weight. But this Court cannot affirm the conviction below upon evidence which the Trial Court found would *not* support a conviction.

The two books in Exhibit 9 and the book in Exhibit 11 which the District Attorney thought were "very obscene" (fol. 77) were not kept for sale, etc. according to the uncontradicted testimony of Appellant (Rep. Tr. p. 127, line 15; P. 129, line 5). Moreover, as we have observed before the Judge did not read these books in their entirety (Rep. Tr.

p. 104, lines 11-12; p. 107, lines 22-24). It should also be observed that these books were not advertised in any of the brochures introduced in evidence.

Apparently it is the Appellee's theory that it proves a keeping for sale by showing that particular items are advertised for sale. As to these books then, since they were not advertised for sale and there was no other evidence that they were kept for sale there was an absolute failure of proof.

Exhibit 12 which the Appellee says was "very obscene" was found in the office at Melrose Avenue (Appellee's Opening Brief p. 6, lines 17-24)—not in the warehouse on Santa Monica Boulevard (Appellee's Opening Brief, p. 7, lines 18-22) in a locked cabinet in Appellant's office (Rep. Tr. p. 31, line 23; p. 32, line 13). Although advertising brochures were mailed from the office (Rep. Tr. p. 40, lines 10-15) the wares were not (Rep. Tr. p. 40, lines 16-19). The merchandise that was kept for distribution or sale through the mails was kept at the warehouse on Santa Monica Boulevard.

Apparently as an afterthought Appellee contends that Exhibit 12 was advertised in Exhibit 2. The copy of the analysis furnished us shows that Exhibit 2 is typed in ribbon whereas the balance of the matter referring to Exhibit 12 are carbons. It is true that Exhibit 2 refers to Stereos but it does not refer specifically to Exhibit 12. Indeed the copy of the inventory (Rep. Tr. p. 37, lines 1-5) shows that the following stereos were taken from the warehouse:

> 6 sets each stereo slides T3-T4-503a (p. 2 of inventory).
>
> 6 sets each stereo slides N, NS, 5S, 10S, 25S, 5ASB, 5NAS, 5 NS, 5 NAS, 30S, 80S, 240S, 5 ASR, 5 ASY, [fol. 78] 5 ASB, "Specials", 2 SY, 2 SR, 25B, WIS (p. 2 of inventory).
>
> 6 boxes NS stereos (p. 2 of inventory).
>
> 1 box of 413c (p. 2 of inventory).
>
> 1 box "stereos" 5 NAS (numerous valued) (p. 2 of inventory).
>
> 6 each sets stereo slides T8, T10, T11 (p. 2 of inventory).

6 stereo slides Ks, 4, 6, 7, 8, (6 each set) (p. 4 of inventory).

6 each sets stereo slides Nos. 11, 12, 13, 14, 15 "MMS" (p. 4 of inventory).

6 each sets stereo slides "MMS" 6, 7, 8, 9, 10 (p. 4 of inventory).

6 each sets stereo slides "MMS" 1, 2, 3, 4, 5 (p. 4 of inventory).

6 each sets stereo slides "MMS" 16, 17, 18, 19, 20 (p. 4 of inventory).

6 each sets stereo slides T8, T11 (p. 4 of inventory).

6 sets stereo slides S-1, S-6, S-5, S-4, S-3, S-3 (1 set) (p. 5 of inventory).

6 sets stereo slides T-5, T-3, T-2, T-1 (p. 5 of inventory).

The circulars offered no proof that the stereos introduced as Exhibit 12 were kept for sale or distribution, and there is no other proof.

In the analysis Exhibits 21 and 22 were changed in pen from "moderately obscene" to "very obscene". In any event they were found in the home and the Trial Judge did not convict on those exhibits.

We assume that when the District Attorney says an item is moderately obscene he means that there is room for a difference of opinion and that a lewd intent could not be spelled out of mere distribution by mail of the "moderately obscene" items.

Therefore, if our analysis of the evidence is correct there was not a single item of a "very obscene" nature which the Trial Court relied upon and was shown to be kept for sale or distributed, etc. by Appellant.

[fol. 79] The difficulty this Court is having in segregating and evaluating the exhibits illustrates the essential unfairness of the charge and trial. The exhibits were placed before the Trial Judge en masse on June 9, 1955, the Court recessing at 3:45 P.M. (Rep. Tr. p. 90, line 8). Thereafter he went over this mass of exhibits as well as a large number of legal authorities (Rep. Tr. p. 93, lines 5-6). The next morning he found them obscene at least in part (Rep. Tr.

p. 111, lines 1-2). This is not a conviction in accordance with law but rather one based upon emotion, confusion and prejudice.

The Trial Court made it plain that he did not like the Appellant's business (Rep. Tr. p. 111, lines 16; p. 142, line 1) and that he was convicting because Appellant was at least close to the line (Rep. Tr. p. 148, line 21; p. 149, line 8). But the United States Court of Appeals has held that there is nothing unlawful per se in the business, *Olesen v. Staunard*, decided October 26, 1955.

The note on the bottom of Appellee's analysis also reflects the essential unfairness of the entire proceeding. Nine months after the arrest the prosecuting attorney still cannot say definitively what he considers obscene in all of the exhibits introduced against Appellant.

The language of *People v. Sarazzowski*, 27 C 2d 7 is here applicable:

> "When we speak of administering 'justice' in criminal cases, under the American or English system of procedure, we mean something more than merely ascertaining whether an accused is or is not guilty. It is an essential part of justice that the question of guilt or innocence shall be determined by an orderly legal procedure in which the substantial rights belonging to [fol. 80] defendants shall be respected:"

Also apt are the words of a unanimous Supreme Court in *Smith v. O'Grady*, 312 U.S. 329, 334, where the Court said that the defendant was "denied any real notice of the true nature of the charges against him, the first and most universally recognized requirement of due process."

The conflict between even the Trial Court and the Appellee as to what is and what is not obscene and the degree of obscenity call to mind the words of Time Magazine (December 9, 1946) discussing the *Doubleday and Company* case cited in our opening brief: "It proves . . . that finding a yardstick for proving a . . . book indecent is as difficult as weighing a pound of waltzing mice."

Respectfully submitted, Brock, Easton & Fleishman,
By Stanley Fleishman, Attorneys for Defendant.

[fol. 81] Affidavit of Service by Mail—(Omitted in printing)

[fol. 82] [File endorsement omitted.]

In the Appellate Department of the Superior Court, County of Los Angeles, State of California

Superior Court No. CR A 3350

Trial Court No. M-2360

People of the State of California, Plaintiff and Respondent

vs.

David S. Alberts, Defendant and Appellant

Appeal by defendant from a judgment and an order of the Municipal Court of Beverly Hills Judicial District, Charles J. Griffin, Judge. Affirmed.

For Appellants: C. Richard Maddox, Esq. & Stanley Fleishman, Esq.

For Respondent: S. Ernest Roll, District Attorney Jere J. Sullivan, Deputy District Attorney.

Amicus Curiae: A. L. Wirin, Esq.

Opinion—December 29, 1955

The defendant was convicted on two charges based on section 311 of the Penal Code: that he had lewdly kept for sale obscene and indecent books; and that he had lewdly written, composed, and published an advertisement of them. A new trial was denied, and a sentence (its terms not divulged) was imposed. The appeal is from the order and judgment.

Section 311, Penal Code, declares a large number of acts, if lewdly done, to be a misdemeanor. Subdivision 3 of the section alone lists some nineteen of these acts, and in the

first count of the complaint it was charged that the defend-[fol. 83] ant had done all of them. Whatever may be said about the possibility that one who swears to such a complaint is guilty of perjury (for there was not the slightest proof that the defendant had committed most of the acts charged), and that a decent regard to fair play would dictate that some attempt be made to have the charge fit the known facts, it is not legal error to charge them all in one count. (See *People* v. *McGlennegen* (1925), 195 Cal. 445, 452, 234 P. 91; *Bealmear* v. *So. Calif. Edison Co.* (1943), 22 Cal. 2d 337, 340-343, 139 P. 2d 20, 22-23; *People* v. *Rosenbloom* (1931), 119 Cal. App. (Supp.) 759, 762, 2 P. 2d 228, 230; and *People* v. *Allington* (1954), 103 Cal. App. 2d (Supp.) 911, 914-919, 229 P. 2d 495, 497-500.)

Two other facts support our conclusion that a reversal should not be had because of the shot-gun character of pleading. The first is, that even if it were error to charge the many acts with reference to many things, with no expectation of proving but a few of them, no attack was made upon the complaint by demurrer, as may now be done. (Section 1004, Penal Code.) Moreover, while the type of pleading being considered lends itself to an unfair prosecution, actually, in this case, the defendant was not prejudiced; he would have been no better off had the charge been simply that he kept obscene books for sale.

The words "obscene and indecent" as used in subdivision 3 of section 311, are not unconstitutionally indefinite. As early as 1896 the United States Supreme Court knew their meaning. (*Swearingen* v. *U.S.* (1896), 161 U.S. 446, 451, 40 L. ed. 765, 766), and a large number of cases since then have been decided on the theory that their meaning was not obscure. (See Annotation, 76 A.L.R. 1099, and *People* v. *Wepplo* (1947), 78 Cal. App. 2d (Supp.) 959, 961, 178 P. 2d 853, 855.) To be sure, it is not always easy to decide on which side of the line a book should be placed, but if a difficulty of that sort sufficed to condemn a statute, then we could not declare it to be a crime to drive while [fol. 84] under the influence of liquor, or to induce a person to part with his property by a false pretense, or to kill with malice aforethought.

The circumstance that the defendant made use of the United States mails to advertise and to distribute his ob-

scene wares—and that some of his books were obscene we do not consider debatable—does not render the state statute (section 311) inoperative. (See *In re Phoedovius* (1918), 177 Cal. 238, 246, 170 Pac. 412; *Zinn v. State* (1908), 88 Ark. 273, 114 S.W. 227, 228; *Exparte Williams* (1940), 345 Mo. 1121, 139 S.W. 2d 485, 491 [which cites *In re Phoedovius, supra*; certiorari denied in *U.S. Supreme Court*, 311 U.S. 675, 85 L. ed. 434); *Railway Mail Ass'n v. Corsi* (1945), 326 U.S. 88, 95, 89 L. ed. 2072, 2077.)

We see no good purpose to be served by a discussion of either the evidence, which we find sufficient to support the judgment, or of the other contentions advanced.

The order and judgment appealed from are affirmed.

Dated December 29, 1955.

Bishop, Judge.

We concur.

Shaw, Presiding Judge, ——, Judge.

[fols. 85-97] In the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles

Superior Court No. CR A 3350

Trial Court No. M-2360

On Appeal from the Municipal Court of the Beverly Hills Judicial District, County of Los Angeles, State of California.

People of the State of California, Plaintiff and Respondent

vs.

David S. Alberts, Defendant and Appellant

Judgment—Filed December 29, 1955

This cause having been argued and submitted and fully considered, judgment is ordered as follows:

It is ordered and adjudged that the order and judgment appealed from, made and entered in the Municipal Court

of the Beverly Hills Judicial District, County of Los Angeles, State of California, in the above entitled cause be and the same are hereby affirmed.

[fol. 98] [File endorsement omitted]

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

ORDER AND MEMORANDUM DENYING REHEARING January 12, 1956

The petition of appellant for a rehearing after judgment of this court on appeal, in the above entitled matter, having been filed, and having been duly considered,

Said petition is hereby denied.

Memo

In his petition for a rehearing, the defendant reveals that he shares a misunderstanding of the duty resting upon this Department, with respect to the writing of opinions, that is so widely held that it calls for a comment. Referring to the pronounced silence in our opinion, on a proposition he had argued, the defendant stated: "a proper consideration for the parties and this Court's duty to declare the law would seem to require some comment on the question posed."

Throughout the past twenty-five years, "this court" has recognized a duty "to declare the law" in only a very limited number of cases. To begin with, the requirement [fol. 99] of Article VI, section 24, of the State Constitution, that "all decisions of the Supreme Court and of the district courts of appeal shall be given in writing, and the grounds of the decision shall be stated" obviously does not apply to us. Moreover, Rule 6, of the rules adopted by the Judicial Council for the government of appellate departments, declares that "The judges of the Appellate Department shall not be required to write opinions in any cases decided by them, but may do so whenever they deem it advisable or in the public interest."

We sympathize with the desire of counsel, who have car-

nestly argued a question, to have us explain how we arrived at an adverse answer. The number of cases that come before us is so great, however, that, as a rule, we cannot gratify the understandable desire of counsel, for writing an opinion often takes more time than arriving at it. Our system of conference, before and after the call of the calendar, reduces to near the vanishing point the danger of one-man decisions, or decisions made without considering the points and authorities advanced.

Now and then a case comes before us involving a question that is little likely to be solved, at any early time, by either the Supreme Court or one of the district courts of appeal, but which will frequently reappear before the more than eighty municipal court judges whose judgments come to us on appeal. Examples readily come to mind: the unlawful detainer actions under the rent regulations; violations of a newly created offense punishable only as a misdemeanor. In this class of cases we recognize a duty "to declare the law." Even in such cases we feel under no duty to comment on every contention that may be made. We do not believe that we should follow practices that add unnecessarily to the number of law books that the profession must buy and provide shelves to house.

[fols. 100-101] Dated January 12, 1956.

By the Court. Bishop, Presiding Judge, —— Judge, —— ——, Judge.

[fols. 102-105] In the Municipal Court of Beverly Hills Judicial District, County of Los Angeles, State of California

Before Hon. Charles J. Griffin, Judge.

[Title omitted]

Reporter's Transcript on Appeal—June 9 and 10, 1955

Appearances of Counsel:

For the People: S. Ernest Roll, District Attorney, By: James F. Nelson, Deputy District Attorney, 6th Floor, Hall of Justice, Los Angeles 12, California.

For the Defendants: C. Richard Maddox, Esq., 9441 Wilshire Blvd., Suite 426, Beverly Hills, California. (BRadshaw 2-5785).

[fol. 106] Beverly Hills, California, Thursday, June 9, 1955, 9:30 A. M.

The Court: People versus David S. Alberts and Violet E. Alberts.

Mr. Maddox: Ready for the defendants, your Honor.

Mr. Nelson: The people are ready, your Honor.

The Court: All right, gentlemen, you may proceed.

Mr. Nelson: Sergeant Frank W. Bridges, please.

FRANK W. BRIDGES, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

The Witness: Frank W. Bridges.

Direct examination.

By Mr. Nelson:

Q. What is your occupation, Mr. Bridges?

A. Deputy sheriff, Los Angeles County, attached to the Vice Detail.

Q. You are one of the investigating officers in this case?

A. I am.

Q. Directing your attention to February 25, 1955, Mr. Bridges, did a portion of your investigation take place on [fol. 107] that day?

A. Yes, sir, it did.

Q. Where was this investigation conducted?

A. At 8733 Santa Monica Boulevard.

Q. Did you go to that location on February 25, 1955?

A. I did.

Q. Before you went to that location had your procured a search warrant for such address?

A. Yes, sir, I had.

Q. And where was that procured and on what date, sir?

A. On the same date, the 25th of February, 1955, from the District Attorney's office, and subsequently from the Beverly Hills Municipal Court.

Q. Would you tell the court now the circumstances surrounding your investigation on the 25th of February at this address on Santa Monica Boulevard?

A. I proceeded to the location together with other deputy sheriffs, Los Angeles police officers, and representatives from the District Attorney's office. I arrived at the location at approximately 11:00 a. m.

At approximately 1:00 p. m. Mrs. Alberts came to the location. I gave her a copy of the search warrant, and she admitted myself and the other officers into the location.

Q. At that time was a search conducted of those premises?

A. Yes, sir, it was.

[fol. 108] Q. Would you describe the premises as you found them on the inside and on the outside?

A. The location is a one-story garage-type structure. It contains, inside, a number of racks and shelves and additional paraphernalia.

The Court: Pardon me. Do you want a blackboard on this?

Mr. Nelson: I don't think it is necessary, your Honor. All we need is a vague description.

Q. What did you observe, if anything, on these racks and shelves, Sergeant Bridges?

A. Numerous books, pictures, and stereo slides, together with other material.

Mr. Nelson: Your Honor, I have a bundle of what appear to be small booklets, approximately 3 inches by 4½ inches in size, and which bear the titles:

1. Ballad of a Nun and Other Poems.
2. Homosexual Life.
3. Letters of the Courtesans.
4. How To Be Married Though Happy or How To Be Happy Though Married.
5. The Prostitute and Her Lover.
6. The Love Affair of a Priest and a Nun.
7. Amorous Tales of the Monks.
8. Wild Women of Broadway.
9. Strange Marriage Customs.

[fol. 109] 10. Confessions of a Minister's Daughter.

11. The Fleece of Gold.

I think, in view of the fact that there will probably be numerous exhibits, your Honor, if these may be accepted as People's Exhibit 1 it will probably be more convenient.

The Court: They may be received as one exhibit for the People for identification.

Mr. Nelson: For identification, yes.

Q. I show you People's Exhibit 1 for identification, Sergeant Bridges. Did you see those booklets or booklets similar to that on that occasion?

A. Yes, sir, I did.

Q. Were they located upon the shelving at the address on Santa Monica Boulevard?

A. Yes, they were. I identify them by my initials and the address of the location, placed on each booklet.

Q. And those booklets now bear that identification mark, is that correct?

A. Yes, sir, they do.

Q. At the time you discovered these booklets were either of the defendants present?

A. Yes, Mrs. Alberts.

Q. Now, by "Mrs. Alberts" do you mean the lady at the end of the counsel table?

A. Yes, sir, I do.

Q. A defendant in this case?

[fol. 110] A. Yes, sir.

Mr. Nelson: Your Honor, I have now what appears to be an advertising brochure printed in black upon a white paper with a pink border. May this be marked People's Exhibit 2 for identification?

The Court: It may be so marked.

By Mr. Nelson:

Q. I show you People's Exhibit 2, Sergeant Bridges. Have you seen that or a similar brochure to that before?

A. Yes, sir, I have.

Q. Did you find that brochure or one similar to that in the address at Santa Monica Boulevard on the 25th of February 1955?

A. Yes, sir, I did. I identify it again by my initials and the location, placed on the front portion thereof.

Mr. Nelson: Your Honor, I have now another of what appears to be another sales brochure which is printed in black on yellow paper. May it be marked People's Exhibit 3 for identification?

The Court: It may be so marked.

By Mr. Nelson:

Q. I show you People's Exhibit 3, Sergeant Bridges, and ask you, have you seen that or a similar brochure before?

A. Yes, sir, I have.

Q. Did you see that upon the occasion of February 25th [fol. 111] at the address 8733 Santa Monica Boulevard?

A. Yes, sir, I did.

Mr. Nelson: Your Honor, I have now a packet of a series of pictures entitled "Tina's Torture" placed on photographic print paper approximately the size of 3½ inches by 11½ inches. May this be marked People's Exhibit 4 for identification.

The Court: It may be so marked.

By Mr. Nelson:

Q. I show you People's Exhibit 4, Sergeant Bridges. Have you seen that particular sequence of pictures before?

A. Yes, sir, I have.

Q. Did you find that sequence or a similar sequence to be at the location on Santa Monica Boulevard on the occasion of this search?

A. Yes, sir; I did.

Mr. Nelson: Your Honor, I now hold in my hand a series of eight larger booklets, being approximately 5½ by 8 inches in dimensions, which bear the following titles:

Petting as an Erotic Exercise.

Bestiality and the Law.

Male Homosexuals Tell Their Stories.

The Business Side of the Oldest Business.

Questions and Answers About Orageinital Contacts.

The Picture of Conjugal Love.

William Heirens—Notorious Sex Maniac.

[fol. 112] Female Homosexuals—Lesbians Tell Their Stories.

Bestiality in Ancient and Modern Times.

May these eight booklets be combined as People's Exhibit 5 for identification?

The Court: They may be so makred.

By Mr. Nelson:

Q. I show you now People's Exhibit 5, Sergeant Bridges. Have you seen those booklets before, or booklets similar to them?

A. Yes, sir, I have.

Q. Did you see them upon the above occasion at the address on Santa Monica Boulevard?

A. Yes, sir, I did.

Mr. Nelson: Your Honor, I now have 20 packets of pictures approximately 3 inches by 4 inches in size, which are identified by a picture of girls tied in what appears to be a dental or barber chair. May these 20 packets of pictures be marked People's Exhibit 6 for identification?

The Court: They may be so marked.

By Mr. Nelson:

Q. Will you examine People's Exhibit 6 for identification, please, Sergeant Bridges? Do you recognize those pictures, sir?

A. Yes, sir, I do.

Q. Are they the pictures or similar pictures to those you found on Santa Monica Boulevard at 8733 on the 25th day of February 1955?

A. Yes, sir, they are.

[fol. 113] Q. Directing your attention now to all of the exhibits which have thus far been placed before you on the table, were there more than one copy of these exhibits, which you see exemplified there, in the location on Santa Monica Boulevard?

A. Yes, sir, there were. We took in each instance six copies of each one of the individual exhibits.

Q. Are you able to state whether or not there are five duplicates at least of each of the exhibits which appear before you on the table now?

A. Yes, sir, I am.

Q. Is there?

A. Yes, sir, there is.

Q. As these items were taken, Sergeant Bridges, what was done with them?

A. In each instance, as each individual item was taken from the racks or the shelves, the name of the booklet or series of pictures was read aloud together with the identification number on each in most instances, and in each instance Officer Barnes or Deputy Greenleaf made a recordation of each side. These recordations were subsequently signed by myself and the other officers, and a copy of same was given to the defendant, Mrs. Violet Alberts.

Mr. Nelson: Your Honor, at this time I have three small packets of gummed-back labels which appear to be for the [Vol. 114] purpose of placing on a mailed enveiope. One is labeled, "Initial S Shop, Box 46946, West Hollywood 46, California."

Another is labeled, "From Sailor Jock's Club, 8923 Sunset Strip, Los Angeles 46, California."

The third is labeled, "This parcel may be opened if necessary. Male Merchandise Mart, Hollywood 46, California. Contents Merchandise Books."

May these three packets of labels be marked People's Exhibit 7 for identification.

The Court: They may be so marked.

By Mr. Nelson:

Q. I show you People's Exhibit 7, Sergeant Bridges. Have you seen these labels or labels similar to them before?

A. Yes, sir, I have.

Q. Did you see these labels or similar labels on the occasion at 8733 Santa Monica Boulevard pursuant to a search of that location on February 25, 1955?

A. Yes, sir, I did.

Mr. Nelson: You may cross-examine.

Cross Examination.

By Mr. Maddox:

Q. Sergeant Bridges, you stated you arrived at the Santa Monica address at about 11:00 o'clock, and you met Mrs.

Alberts, one of the co-defendants, at about 1:00 o'clock. What time did you leave the Santa Monica address?

[fol. 115] A. My best recollection would be approximately four or five that afternoon or that evening.

Q. During that time you and the other officers were making an inspection of the premises and, as you have described, these articles on shelves, is that right?

A. Yes, sir, that's correct.

Q. How many officers were there making this inspection?

A. Initially there were, I believe, five.

Q. And you five officers worked continually then, from eleven to four, making an inspection and then ultimately, taking these particular articles and removing them from the premises, is that right?

A. Yes, sir. Those articles together with additional articles and copies of each.

Q. I believe you testified that you took six or three or a certain number of each one of these items. That's what you mean by saying "additional items," isn't that right?

A. Yes, partially. Six of each of the articles in identification today, together with six of additional items, six copies of additional items that aren't presented today as yet.

Q. Then, as I understand your testimony, there are six other additional items that you found in the premises that are not being identified now for evidentiary purposes, is [fol. 116] that right?

A. No, sir.

Q. Well, then, I'll put it this way: Have you told us here about all the exhibits that you took from the premises?

A. No, sir.

Q. There are more, is that right?

A. Yes, sir, that is correct.

Q. What are the other exhibits?

A. Additional books, pamphlets, stereo slides, and pictures.

Q. Have you any way of telling us here approximately the number of items you removed from the warehouse, just generally?

A. No, sir. It would be quite a large amount. I couldn't make a positive state a positive number. I would say

it would be in the hundreds or possibly thousands, taking into consideration that there would be six of each individual item.

Q. You took them away in automobiles and a small truck, is that correct?

A. Yes, sir, that's correct.

Q. Could you describe in somewhat more detail the inside of the premises there designated as a warehouse, and how large it was? Can you tell us about that?

A. Yes, sir. My best estimate would be that it is ap- [fol. 117] proximately 25 by 50 feet in width and length. There is a rack or shelves along the east wall, I believe the south wall, and the west wall. This rack extends approximately two-thirds of the way through the length of the building. In the center and southern portion of the building additional racks and shelving, possibly three, I believe, in number. On the north end there were several mailbags. Just to the south of that, I believe, were two desks, one on the west and one on the east side of the room, and some boxes and packages. But my best recollection is that that is the inside of the building together with the dimensions.

Q. Can you tell us, excepting what you have already told us about these exhibits that have been offered here for identification, what other general merchandise did you find in the warehouse?

A. Just similar-type books, pamphlets, slides, and pictures.

Q. Did you find any novelties?

Do you know what I mean by "novelties"?

A. Yes, sir. Yes, sir, I did.

Q. What were those novelties that you found?

A. My best recollection of those novelties was one of them to be several small figurines of a hula girl. They were hula-girl type figurines. I don't have a recollection of the other novelties.

Q. Did you take any of the novelties with you as ex- [fol. 118] hibits or did you remove them from the warehouse, that is, any of the novelties?

A. Yes, sir, we removed six of each of the novelties.

Mr. Maddox: I see. I have no further questions.

The Court: Any redirect?

Redirect Examination.

By Mr. Nelson:

Q. Sergeant Bridges, you spoke of some hula-girl figurines.

A. Yes, sir.

Mr. Nelson: Your Honor, I have here what appears to be another sales brochure, printed in dark green on white and approximately 8½ inches by 24 inches. May it be marked People's exhibit next for identification?

The Court: It may be marked People's Exhibit 8 for identification.

By Mr. Nelson:

Q. You speak of hula-girl figurines, Sergeant Bridges. Would you examine People's Exhibit 8 and see if there is on there a representation of what you found at the location on Santa Monica Boulevard?

Mr. Maddox: I object to that, if the court please, as calling for a conclusion of this witness as to the fact that he is stating that on that particular brochure he is now giving an opinion as to whether it is the same as one that he found in the premises.

[fol. 119] Mr. Nelson: I don't think that is subject to expert testimony, your Honor.

The Court: Well, he can give a statement as to whether or not there is any drawing or photograph on there which is similar to the figurines that he removed.

Mr. Maddox: Well, he might state whether it is a description of a figurine, but whether or not it is the same is a question to be determined by the court and not by this witness.

The Court: I don't know what is in there. I haven't seen it. But if there is a photograph of something which in his opinion is similar to the figurine, he can so state.

Mr. Maddox: Very well, your Honor.

The Court: The objection is overruled.

A. Yes, sir, there is a photograph similar to one of the figurines that we took from the location.

By Mr. Nelson:

Q. Would you indicate upon the brochure which photograph you are telling us about, Sergeant Bridges?

A. It appears in the middle of the—the bottom of the middle of the page that I am looking at, in the lower portion.

Q. And you are referring to a portion that is described on this paper as "Learn Nancy's Secret. Naughty Nancy," is that correct?

A. Yes, sir.

[fol. 120] Q. Incidentally, Sergeant Bridges, have you seen a brochure similar to this one, this green on white that is in front of you now as People's Exhibit 8?

A. Yes, sir, I have.

Q. Did you see any on the above location?

A. Yes, sir, I did.

Q. That is, on Santa Monica Boulevard on the 25th of February pursuant to a search?

A. Yes, sir.

Q. And were some of those taken also?

A. Yes, sir, they were.

Q. How many?

A. I don't recall.

Q. More than one?

A. More than one, yes.

Q. You mentioned on cross examination that duplications of certain articles were taken. Did you take any articles from this warehouse that were not duplicates?

A. I don't recall them doing so, sir.

Q. I am not referring particularly to the books, pamphlets, etc., but any other items such as mailing lists or work records or anything of that nature from that location?

A. Yes, sir, I believe there were several mailing lists that were not in duplicate that were taken from the location on the 25th of February.

[fol. 121] Mr. Nelson: No further questions.

Mr. Maddox: No further questions.

The Court: That is all.

Mr. Maddox: This witness may be excused unless you desire to have him remain.

Mr. Nelson: I think he would just as soon remain.

STIPULATION AS TO TESTIMONY OF P. I. BARNES

At this time, counsel, may it be stipulated that P. I. Barnes of the Los Angeles Police Department, Administrative Vice Detail, be deemed to have been sworn and to have testified substantially and essentially the same as Sergeant Frank W. Bridges, the witness who just left the stand?

Mr. Maddox: I understand that P. I. Barnes is an officer with the L. A. Vice Detail of the Los Angeles Police Department.

Mr. Nelson: Yes, who participated in the search of the 8733 Santa Monica Boulevard address.

Mr. Maddox: Well, I will stipulate that if he were called he would testify substantially as Sergeant Bridges has.

Mr. Nelson: I don't mean to be overly technical, but I would prefer to have the stipulation read that it be deemed that he has been called, sworn, and so testified.

Mr. Maddox: Yes.

The Court: Do you so stipulate?

Mr. Maddox: Yes.

Mr. Nelson: Sergeant Russell Gardner, please.

[fol. 122] RUSSELL GARDNER, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Russell Gardner.

Direct examination.

By Mr. Nelson:

Q. What is your occupation, Mr. Gardner?

A. Deputy sheriff of Los Angeles County attached to the Vice Detail.

Q. You are one of the investigating officers in this case, sir?

A. I am.

Q. When and where did your investigation of this matter take place?

A. At approximately 11:00 o'clock a. m. on the 25th of February at 8627 Melrose Boulvard.

Q. What is located at that address, sir?

A. That is a single-story commercial-type building in a commercial area.

Q. Does it have a name or other designation, other than the street number?

A. Not as I recall. It consists of a door fronting on the street. The building was divided into two portions, the [fol. 123] front portion consisting of an office containing various cabinets and files and desks, and the rear portion of the building consisting of approximately three-quarters of the length of the building.

Q. Mr. Gardner, will you examine People's Exhibit 8 for identification, which is on the desk in front of you?

A. Yes.

Q. Have you seen that or one similar to it before?

A. Yes, I have.

Q. Similar to that brochure?

A. I have.

Q. Did you find that brochure or one similar to that in the location on Melrose Avenue?

A. I did.

Q. Will you describe the inside of this address on Melrose as you observed it on that occasion?

A. Yes. The front portion of the building consisted of an office space containing two desks and various filing cabinets. It was separated from the rear of the building by a partition which had an open door entering the back of the building, which consisted of approximately three-quarters of the building, which was, I would say, 20 feet in width by 60 feet in depth, and which contained various types of machinery such as typewriters, addressing machines, mailbags, and it also contained numerous brochures of this nature that I have already described here.

[fol. 124] There were at the time six women in the rear portion of the building busy typing addresses from an address list onto envelopes which contained these various brochures.

In addition to the brochures there were various books, records, mailing lists, and various other pamphlets at the location.

Q. Were there any shelves or anything for the storage of these materials?.

A. There were.

Q. How did you gain entry to this location?

A. The front door was open. I walked into the front door and proceeded to the rear portion of the building.

Q. Did you encounter someone therein?

A. I did.

Q. Were you asked for a search warrant?

A. Not at that time, no.

Q. Did you have a search warrant?

A. I did.

Q. At the time you entered the building on Melrose were either of the defendants, either David Alberts or Violet Alberts, on the premises?

A. Not at that time, no.

Q. Did they arrive on the premises later?

A. They did.

Q. Which one of them, or both?

A. Mrs. Alberts arrived at the premises subsequent to [fol. 125] my arrival.

Mr. Nelson: Your Honor, I have six books which are bound volumes approximately 5 inches by 8½ inches in size, titled as follows:

To Beg I Am Ashamed.
Witch on Wheels.
The Pleasures of the Torture Chamber.
Snow Job.
She Made It Pay.
Sword of Desire.

May these six books combined be marked People's Exhibit 9 for identification?

The Court: They may be so marked.

By Mr. Nelson:

Q. I show you People's Exhibit 9 and the books which make it up. Have you seen them before, Sergeant Gardner?

A. Yes, I have.

Q. Where did you see those books?

A. Those books were recovered from the cabinet that was in the front portion of the location.

Q. Were duplicates of those books taken?

A. No, they were not. These were individual copies that were confiscated.

Mr. Maddox: I didn't hear that.

The Witness: They were individual copies that were confiscated.

[fol. 126] Mr. Nelson: Your Honor, I have ten issues of what appears to be a small magazine, 5 by 8½ inches in size, entitled "Good Times." May these ten issues be marked People's Exhibit 10 for identification?

The Court: They may be so marked.

By Mr. Nelson:

Q. I show you these magazines, Sergeant Gardner, and ask you, have you seen them before?

A. I have.

Q. Did you see them on the occasion of your search of the Melrose location?

A. I did.

Q. Are you able to state whether those are individual copies or duplicates of the property seized?

A. These are individual copies consisting of a series of volumes.

Q. In other words, there are more than this series of magazines?

A. That's correct.

Q. Directing your attention to the books in People's Exhibit 9 for identification, in the book entitled "Sword of Desire" there appears to be protruding from the book a yellow slip of paper. Did you notice that yellow slip of paper in any of the books?

A. Yes. This was in the books.

Q. And this slip of paper which is included now in People's Exhibit 9 says, "Important Notice: Due to circum-[fol. 127] stances beyond our control it was necessary to make a substitution in your order. When we do so we al-

ways substitute an item of more select nature. We have done so in this case."

Was the wording of that—do you recall that as being the wording of that yellow notice when you first saw it?

A. I do.

Mr. Maddox: Counsel, may I ask here: The yellow slip that you are just referring to, are you making that a part of that Exhibit 9, or do you want to make it a separate exhibit?

Mr. Nelson: Perhaps I should ask another preliminary question before we decide, counsel.

Q. Sergeant Gardner, do you recall whether or not that yellow slip was found in each of these books?

A. No, I don't recall finding it in each of the books. However, it was in this one book you referred to.

Mr. Nelson: Perhaps, with your Honor's permission, we should make the yellow slip People's Exhibit 9-A for identification unless that is confusing to the clerk and the court.

The Court: No. Or else withdraw that from Exhibit 9 and make that yellow slip Exhibit 10 separately. He says he only found that slip in one book, is that correct?

Mr. Nelson: Yes. We could very well withdraw this.

The Court: Make that a separate exhibit with the [fol. 128] yellow——

Mr. Nelson: May the People withdraw the book entitled "Sword of Desire," containing a yellow slip?

The Court: That leaves five books.

Mr. Nelson: And may the "Sword of Desire" and the yellow slip be made People's Exhibit 11 for identification?

The Court: It may be so marked.

Mr. Nelson: Your Honor, I have a box containing a stereo-viewer, containing 13 stereo-slides. May this be marked People's Exhibit 12 for identification?

The Court: It will be so marked.

By Mr. Nelson:

Q. I show you People's Exhibit 12, Sergeant Gardner. Will you examine it, please?

A. (Witness complies.)

Q. Have you seen that exhibit before, sir?

A. I have.

Q. Are you able to state whether or not each of the stereo-slides that appears in that box was in the Melrose location at the time you made the search?

A. Yes, all these slides were in the location when I made the search.

Q. Were there other boxes of slides in the location?

A. There were.

Q. Are these slides duplicates of slides that appeared in those other boxes?

A. Yes, sir.

[fol. 129] Q. Did you seize, under the search warrant, duplicates of these slides?

A. I did.

Mr. Nelson: Your Honor, I have an envelope containing what appears to be a comic strip printed on film print paper, approximately 4 by 10 inches in diameter, and consisting of several sequence sheets, entitled "Madame Olga's Recruits," and also in the envelope what appear to be negatives for the positive prints. May the envelope and its contents be marked People's Exhibit 13 for identification?

The Court: It may be so marked.

By Mr. Nelson:

Q. I show you People's Exhibit 13 for identification, Sergeant Gardner. Did you find that on February 25, 1955?

A. I did.

Q. Where did you find it?

A. This was in a locker that was in the rear portion of the building at the location.

Mr. Nelson: Your Honor, I have another envelope containing what appear to be four photographs to a sheet, and several sheets, in which appear one or more girls. May these be marked—rather, may this envelope and its contents be marked People's Exhibit 14 for identification?

The Court: It may be so marked.

By Mr. Nelson:

Q. I show you People's Exhibit 14, Sergeant Gardner, [fol. 130] Would you examine that, please, and tell us if you have seen that exhibit before?

A. I have.

Mr. Nelson: Your Honor, I have an envelope containing what appear to be negatives, six negatives to one sheet, and the cut versions of the positive prints of those negatives, in which appear the figure or figures of girls or women. May the exhibit be marked People's Exhibit 15 for identification?

The Court: It will be so marked.

By Mr. Nelson:

Q. Sergeant Gardner, would you examine People's Exhibit 15, please?

A. Yes.

Q. Have you seen it before?

A. I have.

Q. When and where?

A. At the location where it was seized on the 25th of February 1955.

Mr. Nelson: Your Honor, I have another envelope which contains a negative—six negatives to a page, and the pictures which appear as positive prints of the negatives, in which appear two women; one of whom appears to be strapped in a barber's chair. May this envelope and its contents be marked People's Exhibit 16 for identification?

The Court: It may be so marked.

By Mr. Nelson:

Q. I show you People's Exhibit 16, Sergeant Gardner, [fol. 131] and ask you if you have seen it before.

A. I have.

Q. When and where?

A. At 8627 Melrose on the 25th of February 1955.

Q. At the time you made this search, Sergeant Gardner, were you in the company of Los Angeles Police Department officers?

A. Yes, sir.

Q. And any members of the District Attorney's investigators?

A. Yes, sir, there was a representative of the District Attorney's office there.

Q. Was Officer Richard Collins of the Los Angeles Police Department present?

A. He was.

Q. What was done with these exhibits that you have testified to, as they were taken from the location?

A. As they were confiscated, the description——

Mr. Maddox: Counsel, possibly to assist you, I will make a stipulation concerning that particular subject matter, if it will help.

Mr. Nelson: Very well.

Mr. Maddox: And that will apply in each one of these instances of a witness testifying, if it will help, that the material was taken in due course, a receipt was given, and it was transported to the District Attorney's office or [fol. 132] Sheriff's office. Is that what you would like?

Mr. Nelson: That's right, where it was kept for safekeeping until this day.

Mr. Maddox: I will make a stipulation to that effect. And will you designate such witnesses who will so testify?

Mr. Nelson: Very well. The People will accept such a stipulation.

The Court: So stipulated.

Mr. Nelson: You may cross-examine.

Cross-examination.

By Mr. Maddox:

Q. Sergeant Gardner, you stated that you went into the office. I believe you described the premises as an office, is that right?

A. The front portion of the premises was an office, yes.

Q. And you say that you found these five books that are bound and that are designated as Exhibit 9. Where did you find those books?

A. They were in a cabinet that was on the west portion of the wall of the office in the front of the building.

Q. Was that cabinet locked or unlocked?

A. It was locked, but subsequently it was unlocked.

Q. Who unlocked it?

A. Mrs. Alberts.

[fol. 133] Q. In other words, you asked her for the key, and she gave you the key, and you unlocked it, is that correct?

A. No, that is not correct.

Q. Anyway, it was unlocked by someone, is that right?

A. Yes.

Q. And that is where you found the five books?

A. Yes.

Q. Now, the ten "Good Times" magazines, where did you find them?

A. As I recall, they were in the same cabinet.

Q. And the stereo-viewer and slides, where did you find them?

A. That was in the cabinet also.

Q. On the premises did you find any further material such as these same books or other books or other stereo-slides?

A. No. As I testified, this was the only individual copies of these bound books that were found.

Q. I see.

Mr. Maddox: I have no further questions.

The Court: Any redirect?

Mr. Nelson: Nothing further.

H. B. Cains.

HANK B. CAINS, called as a witness on behalf of the [fol. 134] People, having been first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

The Witness: Hank B. Cains.

Direct examination.

By Mr. Nelson:

Q. Where do you live, Mr. Cains?

A. 9928 Durant Drive, Beverly Hills.

Q. What is your business or occupation?

A. Builder.
Q. What is the address of your place of business?
A. 8731 Santa Monica Boulevard.
Q. What is located at that address?
A. Our office, warehouse, and parking lot.
Q. Are you the landlord of the address at 8733 Santa Monica Boulevard, sir?
A. I am the master lessee.
Q. You hold the master lease on this property?
A. Yes, sir.
Q. Do you know the defendant David S. Alberts?
A. Yes, sir.
Q. Do you know him as the tenant under you of that location?
A. Yes, sir.
Q. Have you accepted rent from Mr. Alberts for this location?
[fol. 135] A. Yes, sir.
Q. Do you know the co-defendant Violet Alberts?
A. Yes, sir.
Q. Have you seen her on those premises?
A. Yes, sir.
Q. Have you ever accepted rent from her for those premises?
A. Yes, sir.

Mr. Nelson: No further questions.

Cross examination.

By Mr. Maddox:

Q. Do you have a lease, Mr. Cains?
A. Yes, sir.
Q. A written lease?
A. Yes, sir.
Q. And do you have that with you?
A. No, sir.
Q. In whose name do you rent the premises as tenants?
A. I rent it under E. R. Enterprise.
Q. E. R. Enterprise?
A. I think that's the name—Company.
Q. Do you know whether or not that is a corporation?

A. No, sir, I believe it is a company.

Q. You don't know how it is designated on the lease?

A. No, because when the checks come in for the rent [fol. 136] every month my bookkeeper enters them and sends them to the bank, and we only have a verbal one-year lease agreement.

Q. But you do have a written lease with this company, is that right?

A. No, sir.

Q. You don't have anything in writing, then, with this company that occupies this warehouse, is that right?

A. Well, the year before this present one-year lease there might have been some stipulation in writing as to the one-year lease that the company had with our corporation.

Q. Do any other persons pay you rent for this warehouse except David Alberts and Violet Alberts?

A. No, sir.

Q. In other words, no one else has ever given you any money?

A. No, sir.

Mr. Maddox: That is all.

Mr. Nelson: That is all. Nothing further.

The Court: That is all, Mr. Cains—unless you wish him to remain.

Mr. Maddox: The witness may be excused as far as the defense is concerned.

Mr. Nelson: May this witness be excused, your Honor.

The Court: Yes.

Mr. Nelson: Your Honor, at this time the People would like to call Sergeant Frank Bridges temporarily to the stand to clarify a point.

[fol. 137] The Court: Sergeant Bridges, will you come back to the stand, please?

Mr. Nelson: Will you take the stand again, Sergeant Bridges.

Frank W. Bridges, recalled as a witness on behalf of the People, having been previously duly sworn, testified further as follows:

Direct examination.

By Mr. Nelson:

Q. Sergeant Bridges, I will now show you the five books which comprise People's Exhibit 9 for identification. Did you see copies of those books, or what appeared to be copies of those books, at the Santa Monica location?

A. Yes, sir, I did.

Q. The Santa Monica Boulevard location, that is?

A. Yes, sir.

Q. Approximately how many copies did you observe in the premises at that address on Santa Monica Boulevard?

A. More than six in each instance, as I recall.

Q. Did you take six copies of those books?

A. Yes, sir, I believe so.

Q. And were they delivered subsequently to the District Attorney's office for safekeeping?

A. Yes, sir, they were.

[fol. 138] Q. Was a copy of the inventory given to the person at the address?

Mr. Maddox: I will so stipulate.

By Mr. Nelson:

Q. And was a copy of the inventory deliverd to Judge Griffin as the magistrate who issued the search warrant?

A. Yes, sir, it was.

Q. Do you recall, sir, a book entitled "Sword of Desire"?

A. Yes, sir, I believe I do.

Q. Which is People's Exhibit 11 here, as I recall. I can't find it.

The Clerk: It is in the envelope right there.

By Mr. Nelson:

Q. I show you now People's Exhibit 11. Is that the book that I have called your attention to?

A. Yes, sir.

Q. "Sword of Desire"?

A. Yes, sir.

Q. Do you recall whether or not there were copies of this book in the Santa Monica address?

A. Yes, sir, I believe there were.

Q. Did you observe them on the occasion of the search?
A. I did.
Q. Approximately how many?
A. Six or more copies of each.
[fol. 139] Q. Were six copies taken from the location at 8733 Santa Monica Boulevard?
A. Yes, sir.

Mr. Nelson: No further questions.
Mr. Maddox: No further questions.
The Court: That is all.
The court will take a short recess.

(Short recess.)

The Court: You may proceed, gentlemen.
Mr. Nelson: Call Tanagra Regas.
Tanagra Regas, called as a witness on behalf of the People, having been first duly sworn, testified as follows:
The Clerk: Will you state your name, please?
The Witness: Tanagra Regas.

Direct examination.

By Mr. Nelson:

Q. Is it Miss or Mrs. Regas?
A. Mrs.
Q. Where do you live?
A. I live at 6144 Linforth Drive, Hollywood.
Q. Are you employed at this time?
A. Yes, I am.
Q. Where are you employed?
[fol. 140] A. At the Blue Cross Hospital Plan.
Q. What is the address there?
A. 4333 Wilshire Boulevard.
Q. In Los Angeles?
A. In Los Angeles.
Q. Mrs. Regas, do you know the defendants or either of them, Mr. or Mrs. Alberts?
A. Yes, I do.
Q. Do you know them both?
A. Yes, I do.
Q. Have you been in their employ?

A. Yes, I have.

Q. Where were you employed by them?

A. At 8627 Melrose Avenue.

Q. Does that address at 8627 Melrose Avenue have a title or a business name?

A. I believe there is a sign on the front reading "Paragon Enterprise."

Q. What was the nature of your duties there at that location?

A. I was employed as a file clerk.

Q. Were you assigned specific duties to perform there?

A. Yes, sir.

Q. What were they?

A. They were to file all cards in the filing cabinets, re- [fol. 141] move cards that were to be removed or killed; affix labels to cards that were to be sent to a typist; when the cards returned I was to file them in order again.

Q. Mrs. Regas, I will show you People's Exhibit 2 for identification, which is an advertising brochure. Do you recall having seen brochures of that type?

A. Yes, I have.

Q. At the location on Melrose Avenue?

A. That's right, I have.

Q. Did any of your duties concern something to be done with these?

A. Yes, they did.

Q. Do you know whether or not these were mailed from that location?

A. Yes, they were.

Q. Do you know whether or not the materials advertised in those brochures, to your knowledge, were located at the address on Melrose Avenue?

A. I would say no. Possibly there may have been some returns from the post office that were dumped in a box, but I had no contact with them.

Q. With the actual matters advertised in the brochures?

A. With the materials, right.

Q. How long were you employed at this address?

A. I was employed from November the 23rd, 1954, to [fol. 142] March 2, 1955.

Q. Does the name "Male Merchandise Mart" mean anything to you as a part of your employment?

A. Yes.

Q. Did you ever affix a gummed label to an envelope, which contained that notation "Male Merchandise Mart" Or did you ever use a return address from that location, "Male Merchandise Mart"?

A. Yes, sir.

Q. Does the nomenclature "Initial S Shop" or "Stagg Shop" mean anything to you as an employee of that concern?

A. Yes, I have seen that name there.

Q. Was that used as a return address upon envelopes mailed from that location?

A. Yes.

Q. Are you acquainted with the nomenclature "Sailor Jock's Club"?

A. Yes.

Q. Is that known to you to be a return address used on envelopes out of that location?

A. Yes.

Q. How many persons were employed at the time you were employed there on Melrose?

A. On Melrose?

Q. Yes.

A. Five.

[fol. 143] Q. Were you assigned duties concerning cards to be withdrawn from files for one reason or another?

A. Yes, sir.

Q. What was the method used to withdraw cards from their mailing files?

A. The method used was either applied to the envelope or to a letter that had been enclosed in an envelope, and the word "Remove" or "Kill" was written on it.

Q. How did you know which files were to be removed or killed?

A. Pardon?

Q. How did you know which to remove from the cabinets?

A. They were marked so.

Q. What were they marked upon?

A. On the letter or the envelope.

Q. On the letter. Now, what is this letter?

A. The letter addressed to the business.

Q. Did you receive letters at this address on——

A. No, I did not.

Q. Did you receive letters in your basket which appeared to be addressed to this location?

A. Right, yes.

Q. And it was then that you were to act upon these letters in some manner?

A. That is right.

[fol. 144] Q. Have you brought these letters that you have received with you?

A. I have brought two or three, yes.

Q. Were these letters placed in your basket for official action in the course of your business there?

A. That is right.

Q. Have you these letters with you now?

A. (Witness producing documents and handing same to counsel.)

Mr. Nelson: Your Honor, I have what appears to be a small note, in the upper left-hand corner of which is printed a name and address upon a gum-backed label, and this label stapled to the face of the letter. May this be marked People's Exhibit 17?

The Court: It will be marked People's Exhibit 17 for identification.

Mr. Nelson: For identification. Thank you.

Q. I show you People's Exhibit 17, Mrs. Regas. Is that one of the letters that you received to work upon there at the office on Melrose?

A. Yes, sir.

Q. Directing your attention now to the gummed label in the upper left-hand corner, what significance has that? Was that on the letter when you received it?

A. No, this was stapled to this letter. I had not seen the envelope.

[fol. 145] Q. In other words, that is as the letter came to you?

A. That is right.

Q. And what, if anything, did you do upon receipt of this letter?

A. I removed the name from the file.

Q. From whom was direction given to you to do this?

A. It was known to be my duty.

Q. From whom did you get your original direction?

A. My directions were from Mrs. Alberts.

Q. From Mrs. Alberts; that's Violet Alberts, the defendant in this case?

A. I know her as Evelyn.

Q. You know her as Evelyn?

A. Evelyn.

Q. And these other letters that you have brought with you were treated in the same manner as this letter?

A. That is right.

Q. As this letter which is People's Exhibit 17 for identification?

A. Yes, that is right.

Q. Were you on the premises on the date of February 25, 1955, Mrs. Regas?

A. Yes, I was.

Q. Were you there when the officers came in?

A. Yes, I was.

[fol. 146] Q. Did you observe them make a search of the premises?

A. Yes, I did.

Q. After the card had been removed from the file, what was to be done with the letters after this?

A. They were to be thrown in the wastebasket.

Q. And in this case you did not do so, is that correct?

A. I did not do so, no.

Q. And you have kept them in your possession until this date?

A. That is right.

Mr. Nelson: No further questions.

Mr. Maddox: No questions.

The Court: That is all, Mrs. Regas. You are excused.

Mr. Nelson: This witness may be excused, your Honor?

Mr. Maddox: There is no requirement of the defendants that she remain, and she may be excused.

The Witness: Do you leave this here?

Mr. Nelson: The one that is marked in evidence, you may, please, — or, rather, for identification, you may. These are yours and this one stays.

STIPULATION AS TO TESTIMONY OF RICHARD O. COLLINS

At this time, counsel, may it be stipulated that Officer Richard O. Collins of the ~~Los Angeles Police Department~~, Administrative Vice Division, be deemed to have been sworn and to have testified substantially as the testimony [fol. 147] of Sergeant Russell Gardner concerning the activities at 8627 Melrose Avenue on February 25, 1955?

Mr. Maddox: So stipulated.

Mr. Nelson: Robert Wallace, please

ROBERT J. WALLACE, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

The Witness: Robert J. Wallace.

Direct Examination.

By Mr. Nelson:

Q. What is your business or occupation, Mr. Wallace?

A. Deputy sheriff, Los Angeles County, attached to the Vice Detail.

Q. You are one of the investigating officers in this case?

A. I am, sir.

Q. Directing your attention to the 25th day of February 1955, did you proceed to an address in West Los Angeles on that day?

A. I did.

Q. What address?

A. 11064½ Strathmore Drive, sir.

Q. What is located at that address?

[fol. 148] A. It is a two-story multiple-dwelling unit, sir.

Q. Did you have a search warrant concerning the property located at that address?

A. I did, sir.

Q. Did you enter the apartment located there?

A. I did, sir.

Q. What, if anything, did you discover upon entry, sir?

A. Upon entering the apartment, the defendant Alberts was in the driveway upon my arrival, and he was shown a

copy of the search warrant. And he took us up to the front door of the apartment, and he said he did not have a key for the apartment, and he knocked on the door, and the defendant Mrs. Alberts was inside the apartment, and she let us in the apartment.

I explained to Mrs. Alberts that there were other officers at two other locations with search warrants similar to the ones that we had, and that the one location on Santa Monica Boulevard was locked and that we would like to have the location opened.

At that time Mrs. Alberts stated that she would open the location for us.

Q. Did she then leave the premises at Strathmore?

A. She did, sir.

Q. And you were there with other officers?

A. That is correct.

[fol. 149] Q. And Mr. Alberts remained there?

A. Mr. Alberts remained there. I personally transported Mrs. Alberts to the location on Melrose to secure keys for the Santa Monica address.

Q. Did you then return to the Strathmore address?

A. I did, sir.

Q. What transpired upon your rearrival at the Strathmore location?

A. Upon my return to the location on Strathmore Drive a search of the location had been in progress in my absence, and on my return I participated in a further search of the location there.

Q. Directing your attention to People's Exhibit 3 for identification, sir, did you find at that location a brochure the same or similar to that?

A. Similar to this, yes, sir.

Q. Directing your attention——

Mr. Nelson: Excuse me, your Honor. I have another brochure which is of the black on yellow variety. May it be marked People's Exhibit 18 for identification?

The Court: It may be so marked.

By Mr. Nelson:

Q. Directing your attention to People's Exhibit 18, sir, isn't it a fact that that is the brochure that you found at the Strathmore location?

A. Yes, sir, this is the brochure.

Mr. Nelson: Your Honor, I have what appears to be an [fol. 150] 8½-by-11 photograph of a woman. May it be marked People's Exhibit 19 for identification?

The Court: It will be so marked.

By Mr. Nelson:

Q. I show you People's Exhibit 19, Mr. Wallace. Have you seen a picture the same or similar to that?

A. I have, sir.

Mr. Maddox: Is that the one you showed me yesterday?

Mr. Nelson: Yes.

Q. Where was this picture when you saw it first?

A. Well, this picture, when I first saw it, was in the den portion of the apartment at 11064½ Strathmore Drive, sir.

Q. Did you again see that picture in the house?

A. I had a picture and a negative.

Q. You had a negative?

A. A negative of this picture, yes, sir.

Mr. Nelson: Your Honor, I have what appears to be a 4-by-5 negative of the picture which is People's Exhibit 19. May it be marked People's Exhibit 20 for identification, please?

The Court: It may be so marked.

By Mr. Nelson:

Q. I show you this negative. Is that the negative to which you have reference, sir?

A. Yes, sir, that is the negative.

Q. Where was this negative found?

[fol. 151] A. This negative was found with the picture itself. The picture at the time I found it was the exact size as the negative here. However, the negative and the picture both were placed on a table in a dining area, and upon

my return to that area after I had placed the picture and the negative there, the picture itself was missing. However, the negative was still there.

Q. In the same location as previously?

A. In the same location, yes, sir.

Q. At the time this picture was placed upon the table in the dining area where was Mr. Alberts?

A. Mr. Alberts was in the front room, sir.

Q. After you placed the picture on the table in the dining area did you observe Mr. Alberts go through the dining area?

A. Mr. Alberts went through the dining area into the kitchen.

Q. Would you describe what you saw or heard as he went through the dining area into the kitchen?

A. Well, after he got into the kitchen, of course, I couldn't see him from my location, but I did hear the water in the sink being turned on, and a very short time thereafter the garbage dispose-all was turned on.

Q. What did you hear upon hearing the sound of the garbage dispose-all?

A. At that time I went immediately to the kitchen.

[fol. 152] Q. What, if anything, did you observe there?

A. I observed Mr. Alberts standing over the sink, with the garbage dispose-all on and the water turned on.

Q. And at this time was a search made for the print of the picture, the negative of which you have described?

A. At this time a very intensive search was made for the print, yes, sir.

Q. Were you able to locate it?

A. No, sir, I was not.

Q. Calling your attention again to People's Exhibit 19 for identification, this is a blown-up version or enlarged version of the picture that you originally saw?

A. That is correct, sir. The original print was approximately the size of this negative, and this negative was in a sheet that had three other negatives on it.

Q. That negative you are referring to is People's Exhibit 20 for identification?

A. Yes, sir.

Mr. Nelson: Your Honor, I have now four booklets, paper-bound volumes, one entitled "Padlocks and Girdles of Chastity"; one entitled "Straps and Stripes"; one entitled "Memoirs of a Spankee"; and one entitled "Slaves of the Lash."

May these four be marked People's Exhibit 21 for identification?

The Court: They will be marked People's Exhibit 21 for [fol. 153] identification.

Will you let me have that negative and also the large photograph?

The Witness: Yes, sir.

Mr. Nelson: I have also a small magazine-type pamphlet entitled "Unique for Lovers of the Unusual." May this be marked People's Exhibit 22 for identification?

The Court: It may be so marked.

Mr. Maddox: No. 22?

The Court: 22.

By Mr. Nelson:

Q. Directing your attention to these exhibits that I have shown you, 21 and 22, sir, have you seen them before?

A. Yes, sir.

Q. Did you find them in the house at that location?

A. I did, sir.

Q. Of any of these exhibits that you have testified to, 18 through 22, did you find duplicates?

A. Yes, there were duplicates.

Q. Of which items?

A. There were duplicates of—Let's see. This is People's Exhibit 21—duplicates of "Straps and Stripes," "Memoirs of a Spankee," and "Slaves of the Lash." There were duplicates of those books, sir, or those pamphlets.

Mr. Nelson: I have another photographic negative, your Honor, size 4 by 5. May this be marked People's Exhibit [fol. 154] 23 for identification?

The Court: It may be so marked.

By Mr. Nelson:

Q. I show you this negative, sir. Have you seen that before?

A. Yes, sir.

Q. Did you find that in the location on Strathmore?

A. Yes, sir, I did.

Q. Was there a print of that picture?

A. To the best of my knowledge the was a print, sir. I say "to the best of my knowledge there was a print," but I was unable to—yes, I was unable to produce the print.

Mr. Nelson: Counsel, may it be stipulated as per our original stipulation concerning the disposition of the evidence from the moment it was seized by this officer?

Mr. Maddox: So stipulated.

By Mr. Nelson:

Q. Now, in the course of your investigation, Mr. Wallace, did you visit all three locations that have been mentioned here today?

A. I did, yes, sir.

Q. The Strathmore address, the Melrose address, and the Santa Monica Boulevard address?

A. That is correct, sir.

Q. Are all three of these locations located in the County of Los Angeles?

A. In the county, yes, sir.

[fol. 155] Mr. Nelson: No further questions.

Cross-examination.

By Mr. Maddox:

Q. Sergeant Wallace, what time did you arrive at the Strathmore address?

A. At 11:00 o'clock, sir.

Q. What time did you leave?

A. I would say I left the first time at approximately 20 or 25 minutes after my arrival there, sir.

Q. Around 11:30?

A. Approximately that time, yes, sir.

Q. You came back again then, of course?

A. I came back again, yes, sir.

Q. When did you come back?

A. After I had left Mrs. Alberts off at the Santa Monica location.

Q. What time did you arrive the second time at the Strathmore address?

A. To the best of my recollection, sir, it would probably be around 12:30—between 12:30 and 1:00.

Q. And during your absence there were other officers there at the Stratmore address?

A. There were other officers present, yes, sir.

Q. What time did you leave the Strathmore address the second time that you left?

[fol. 156] A. I would say approximately 3:00 p. m.

Q. Well, you only left there once and then, when you left at 3:00 o'clock, you left finally, is that right?

A. That is correct, sir.

Q. During that time how many officers were at the Strathmore address?

A. I believe there was a total of four officers in the initial party at that location.

Q. So there were officers there from; let us say, 11:00 o'clock until 3:00 in the afternoon? We can say that generally?

A. I believe so, sir.

Q. And during the course of the time that the officers were there isn't it a fact that they were in the business or going about the business of searching the premises?

A. You mean during the entire period of time?

Q. Yes.

A. No, sir.

Mr. Nelson: Your Honor, I will object to that, inasmuch as it calls for a conclusion of this witness, and the witness was not present during the entire stay.

The Court: Objection sustained.

By Mr. Maddox:

Q. Well, at the time that you were there, Sergeant Wallace, what did you do while you were there?

A. A part of the time, sir, I was searching the location.

[fol. 157] Q. What else were you doing?

A. I believe I answered the phone on several occasions and I made several calls to Mr. Nelson on occasions.

Q. But you were going about the business of searching the premises yourself, isn't that right?

A. Myself and other officers, yes, sir.

Q. During the course of your search from 11:00 o'clock until 3:00, this is the information here that we have today that you took, these exhibits, is that right?

A. The exhibits that are here today?

Q. Yes.

A. Yes, that is correct.

Q. Regarding these exhibits, you say that you first found some exhibits in the den, is that right?

A. That is correct, sir, in the den portion.

Q. What did you find in the den?

A. The books were found in the den, that negative from which we have the 8-by-10 blowup now, that was found in the den area.

Q. Well, where else——

A. The negative itself and that 8-by-10—not this 8-by-10 but the negative and a picture were found in the closet upon the shelf. That is correct, sir. But the books and the pamphlets were found on the desk.

Q. Lying out on the desk, is that correct?

[fol. 158] A. I believe so, yes, sir.

Q. When you say you found photos and the negatives, they were in a closet in the den, is that right?

A. This particular one, yes, sir.

Q. And that was a closet in the den?

A. Yes, sir.

Q. Was there anything else in the closet?

A. Yes, there were several projection machines and various little rolls of film.

Q. Well, you searched every room in the house, is that right?

A. I believe so, yes, sir.

Q. Did you go down in the basement of the premises?

A. No, sir, I did not go down in the basement.

Q. You did not?

A. No, sir.

Q. Do you know if any officers did?

A. No, sir. I didn't.
Q. Did you go in the garage?
A. Yes, sir.
Q. Did you search the garage?
A. I did, sir.
Q. Did you find anything in the garage?
A. I did, sir.
Q. With regard to this evidence here?
A. Here today, no, sir. There is no evidence here today [fol. 159] that I found in the garage.
Q. Did you go through a locker or a chest?
A. I did, sir.
Q. Did you find anything in there pertaining to your search?
A. I did, sir.
Q. What did you find?
A. I found various photographs of various sizes, and I believe there are some ledgers, some purchase-order books, and that is all.
Q. Do you remember the dates on those ledgers?
A. No, sir, I can't remember the dates on those ledgers.
Q. Did they appear to be recent dates, do you remember that?

Mr. Nelson: Your Honor, I believe the question is ambiguous in that form. What is "recent"?
The Court: Yes.

By Mr. Maddox:

Q. Were you able to determine how recently any of the material had been placed in that chest, as far as a date was concerned, from any material that you found in the chest?
A. I can't recall the dates on the ledgers, no, sir.
Q. Did you find a newspaper?
A. Yes, sir, I did find a newspaper.
Q. Do you remember the date of the newspaper?
[fol. 160] A. No, sir, I do not.
Q. Did you find any clothing in this chest?
A. Now, that I can't recall, sir.

Mr. Maddox: I have no further questions.
The Court: Any redirect?

Mr. Nelson: Nothing further.
The Court: That is all.
Mr. Nelson: Robert Wood, please.

Robert A. Wood, called as a witness on behalf of the People, having been first duly sworn, testified as follows:

The Clerk: State your name, please.
The Witness: Robert A. Wood.

Direct examination.

By Mr. Nelson:

Q. What is your occupation, Mr. Wood?
A. I am a policeman for the City of Los Angeles.
Q. Attached to what division, sir?
A. Attached to the Hollywoood Division, uniform.
Q. Mr. Wood, are you acquainted with the defendant David S. Alberts?
A. I am, sir.
Q. Directing your attention to the 26th day of June 1950, were you in Division 19 of the Los Angeles Municipal Court [fol. 161] on that day?
A. Yes, sir.
Q. Was the defendant David S. Alberts in court on that day?
A. Yes, sir.
Q. Do you knew whether or not he was in court pursuant to an arrest that had been made by you?
A. Yes, sir.
Q. Was he?
A. He was.
Q. What was the nature of the court proceedings on that occasion?

Mr. Maddox: I will object to it on the grounds it is incompetent, irrelevant, and immaterial and it doesn't tend to prove or disprove any issue before the court at the present time.
Mr. Nelson: May I be heard on the issue, your Honor?
The Court: Yes.

Mr. Nelson: The defendant in this case is charged with a violation of Section 647.5 of the Penal Code, which is a state of being a lewd and dissolute person. The evidence, I am convinced, if allowed in this case, will tend to show that on the above occasion he was convicted of being a lewd and dissolute person, and further the evidence will show, and I believe has shown, that he has not corrected his state since that date or made any amends in his manner [fol. 162] of associating with society.

The Court: The defendant is before the court at this time——

Mr. Nelson: It should also be stated, in fairness to Mrs. Alberts, that this evidence should only be directed against Mr. Alberts and not Mrs. Alberts.

The Court: There is included in this complaint now before the court a count charging a violation of Section 647.5 of the Penal Code.

Do you wish to say anything, Mr. Maddox?

Mr. Maddox: So that I wouldn't prejudice any rights of the defendants, I made my objection timely. I don't believe I am premature.

The Court: I am not urging you to argue it. If you would rather not argue further, that's all right, but if you wish to argue in support of your objection you may do so.

Mr. Maddoox: Well, my purpose in making the objection was to protect their rights. However, it has not been stated in the record yet what the charge was five years ago. I assume that counsel will attempt to prove to the court that five years ago the defendant Alberts was convicted of a crime of violating Section 311 of the Penal Code. Now, it is my opinion that Section 311 of the Penal Code does not relate to Section 647.5, and that any conviction five years ago is so remote that it cannot reflect upon character at this time, and therefore it is incompetent, irrelevant, [fol. 163] and immaterial.

The Court: Well, I go along with you to a certain extent, Mr. Maddox: I go along with you to this extent: I don't yet know what the charge was upon which Mr. Alberts was in court, the Los Angeles Municipal Court, in June, 1950, pursuant to an arrest made by this witness, Mr. Wood. I haven't given any evidentiary weight to it. But I gather from what Mr. Nelson said that it was under Section 647.5.

Mr. Nelson: No, your Honor. I did not intend to mislead the court, and perhaps it would aid you in ruling on this matter——

The Court: My first reaction was that if that was a conviction on 647.5 as to the defendant, it does not necessarily mean that it should be given any particular weight in so far as establishing a violation of any subdivision of 311 of the Penal Code in 1955 is concerned. However, there is a fourth count here against the defendants charging a violation of Section 647.5, and I think in respect to the fourth count the matter of any prior record along that line would be admissible.

Mr. Nelson: That is the People's position, your Honor.

The Court: The objection is overruled at this time. Your motion to strike can be reserved after we find out what this matter is that was in court in 1950.

Mr. Maddox: Very well, your Honor.

Mr. Nelson: I have forgotton the phraseology I used in [fol. 164] the question. Perhaps the reporter will read it back.

(Whereupon the last question was read by the reporter as follows:

("Q. What was the nature of the court proceedings on that occasion?")

A. Mr. Alberts was in court that day and he plead guilty to a violation of Section 311, subdivision 2.

By Mr. Nelson:

Q. Of the Penal Code of the State of California?

A. Of the Penal Code of the State of California.

Q. Do you recall whether or not sentence was passed on that day?

A. Sentence was passed, yes.

Mr. Nelson: No further questions.

The Court: Cross-examine.

MOTION TO STRIKE TESTIMONY AND DENIAL THEREOF

Mr. Maddox: No cross examination, your Honor, except that I wish to make a motion at this time to strike that testimony as it relates, of course, to any inference that

the defendants may be guilty under 311 of the Penal Code in this proceeding, and definitely also that it is too remote in point of time to show that the defendant Alberts at this time is a chronic, as we might say, vagrant under the section charged, 647.5, because in June of 1950 he plead guilty to a violation of subdivision 2 of Section 311 of the Penal Code. I fail to see in the law, Section 311 of the Penal Code, that that indicates any immoral or loose [fol. 165] or wanton nature of character that could be carried over for a period of five years from that date, or to the date of February 25th of this year.

Mr. Nelson: I think probably counsel's objection will go to the weight to be given the evidence but not to the admissibility.

The Court: The motion to strike is denied.

No cross examination?

Mr. Maddox: No cross examination.

Mr. Nelson: Nothing further.

May Mr. Wood be excused?

The Court: Yes. You are excused.

Mr. Nelson: May the exhibits heretofore marked for identification, your Honor, be received in evidence?

Mr. Maddox: If the court please, I would like to be heard on some of these exhibits before they are received in evidence.

The Court: Mr. Nelson, will you kindly pass these over so the clerk can mark them?

Mr. Nelson: Yes, your Honor.

These are not marked.

Mr. Maddox: As to the exhibits that have been marked for identification, I have no objection to their being received in evidence with the exception of Exhibit 12, which is a letter, and it was testified by Mrs. Regas——

The Court: Just a moment. I think the exhibit you [fol. 166] refer to is 17.

Mr. Maddox: Pardon me, your Honor. It is Exhibit 17.

Exhibit 17 is a letter, and it is the position of the defendants that that letter is purely hearsay, and further that there is no foundation for the introduction into evidence of that letter because it is not determined who wrote the letter, nor is the handwriting established or the ordinary course of mailing. Mrs. Regas may testify as to the

ordinary course of business and business dealings, but when she goes so far as to attempt to lay a foundation for this letter so it may be introduced in evidence, it is the position of the defendants that it is not a proper foundation and it is irrelevant and immaterial and attempts to inject hearsay matter into the record.

The Court: Mr. Nelson?

Mr. Nelson: If your Honor please, I believe the exhibit is certainly intended by the People to be introduced in evidence for the limited purpose of showing that both of the defendants, and particularly Mrs. Alberts, were in direction and control of this employee, Mrs. Regas, and instructed her to do certain things at that location; which, in fact, were carried out, and this being an example of the carrying out of one of the ordinary business transactions there. I don't know what is in the letter itself. I don't think, in my mind, the court need concern itself with the body of the letter but merely its presence there. [fol. 167] The Court: In testifying, Mrs. Regas testified as to her duties, and among other duties was that of removing cards from the file, and she stated that she did as a part of her duties receive letters which were the basis of the removal of the cards from the file or the withdrawal of cards from the file, and that Exhibit 17 was received by her in connection with her duties, her work or her employment; that it did have attached to it the address label as shown, and written on the letter the word "Remove." She stated that her directions as to procedure regarding the removal of cards and so forth had been given to her by Mrs. Alberts.

The objection to the introduction of this into evidence is overruled and it will be received but for the limited purpose of showing the procedure and not from the standpoint of what the letter contains, because it would be hearsay. But it is received for that limited purpose.

And at this time, so the record may be clear, may I say that the testimony of Officer Wood has been received only as to Mr. Alberts.

Mr. Nelson: Yes, your Honor.

The Court: All exhibits will be received in evidence.

Mr. Nelson: The People rest, your Honor.

The Court: It is a quarter to twelve. Do you wish to continue?

Mr. Maddox: May I examine that Exhibit 17, your Honor?

[fol. 168] (Document passed to counsel.)

MOTION TO ACQUIT

Mr. Maddox: If your Honor please, the defendants wish to make a motion to acquit and find the defendants not guilty, and that will take some argument: I assume there will also be considerable argument from counsel on our motion. Therefore I would suggest, if your Honor sees fit, that we recess at this time and return here and proceed with that argument, because it is ten minutes to twelve, and I wouldn't like to get into it, because there are certain connecting phases of the argument and I would like to do it at one hearing. I would ask that the court allow us to recess at this time and continue at 2:00 o'clock.

The Court: Court will recess until 2:00 o'clock.

Do you wish any further witnesses ordered back, either the People or the defendants?

Mr. Nelson: The People have no reason for any more witnesses, your Honor.

The Court: Do you wish any witnesses ordered back, Mr. Maddox?

Mr. Maddox: No, your Honor.

(Whereupon, at 11:46 a. m., a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 169] BEVERLY HILLS, CALIFORNIA, Thursday, June 9, 1955, 2:00 P. M.

The Court: The People have rested, so you may proceed, Mr. Maddox.

Mr. Maddox: If your Honor please, I have filed a defendants' trial brief setting forth my memorandum of points and authorities, and I have given a copy to the District Attorney.

At the outset I am reminded, if your Honor please, of what Judge Hall said recently in a case wherein obscene matter was the subject of litigation. He stated to both counsel very emphatically, "Gentlemen, do I have to read this trash?"

My purpose in filing this brief, your Honor, is so that, if the court sustains my argument, it will prevent the record from being encumbered with what I state here to be trash.

If your Honor please, I don't want to go back into a review of law and facts that I know the court is familiar with, but briefly, as I have set forth in my memorandum, we must not lose sight of the fact before us that the defendants are charged under Section 311 of the Penal Code with willfully and unlawfully and lewdly having obscene matter for sale or in their possession for sale and advertising such.

At the outset I want to point out, your Honor, that the [fol. 170] People have failed to introduce any evidence whatsoever with respect to Count 3 wherein the defendants are charged with preparing and selling and distributing and exhibiting recordings or transcriptions used and intended to be used in producing and reproducing a lewd and obscene song. As to that count there has been no evidence whatsoever presented in any form.

As to the remaining counts here, wherein the defendants are charged with this obscene matter, I wish to review briefly the law on the subject. Back in 1868 the High Court of England set forth the test of obscenity as follows: "Whether the tendency of the matter charged as obscenity is to deprave and corrupt the average normal person." I accentuate the words "average normal person."

In recent decisions Judge Hand in several celebrated cases has set forth that the word "obscene" shall be allowed to indicate the present critical point in the compromise between candor and shame to the average conscience, and not to fetter meaning by connotations to the lowest and least capable.

Continuing on with the memorandum I have filed, there are a number of decisions that set forth that "obscenity" in past history has not been constant nor has it been as to any particular period connoting one meaning or another in any period. And I make this statement because I am not

trying to state here that the word "obscene" is so vague [fol. 171] as to lack any legal or necessarily moral meeting. I do point out, however, that because of the necessity of proof when words such as "obscene" are used that there must be a clear and definite understanding as to what the law intended by the word "obscene."

And I bring it down to the present time to a case that most certainly I consider to be the law on the subject at hand. It is People vs. Wepplo, decided in 78 Cal. App. 2d Supplement at page 959. The case is set forth in my memorandum. And breaking it down so that we don't have to waste any time, the court in this Wepplo case states that a book or subject matter is obscene if it has a substantial tendency to deprave or corrupt its readers by inciting lascivious thoughts or arousing lustful desires.

Nowhere in history until recent date has the word "substantial" been written into our law. And it has been written into our law because of the so-called confusion that has existed in applying the law of obscenity. And in this Wepplo case they have therefore decided that the law being that if any reading matter or so-called lewd subject matter or lascivious pictures, photos, or whatever they may be, incite lustful desires or lascivious thoughts, the mere fact that it is a mere inciting of such is not enough; there must be substantial apparent incitings of such thoughts and desires.

If your Honor please, in examining the evidence before [fol. 172] the court here we have certain exhibits that are set forth, I believe in all, a total number of about not more than 28. I might not be correct in my number, but I have 28 exhibits. I believe that possibly there are several items that are letters and stickers and gummed labels and such as that, but the exhibits that are presented here might be, as I say, some 24 or 25 exhibits. Here they are before us.

Now, if your Honor please, if you have to read through these exhibits and decide yourself whether this matter is obscene, it will not be practical. And I don't think counsel, myself included, are being fair to you when we ask you to do so, because if we examine the law on the subject, this particular bit of evidence we have here, whether trash or not, does not meet the test of obscenity legally because

there is a further requirement in the law of obscenity that the reading matter or the photographs or whatever it may be, in addition to having a substantial tendency to incite the reader or the viewer to lustful thoughts, it must apply to the average normal person. If it doesn't apply to the average normal person, then we have no practical application of the law whatsoever. And I do not mean to trifle with the court here, but I am reminded of a story that possibly has been told many times of a visitor who came to a city, and upon being shown about by the guide he was told that this particular statute represented some historical fact or event; he was told about the buildings. And to every [fol. 173] direction to a historical site or to a library or to a park, this visitor said, "It reminds me of sex."

And after a while in exasperation the tourist guide stated, "Why is it that everything I point out reminds you of sex?"

And he said, "Well, everything does."

Now, that person is not normal. If your Honor please, we cannot take that so-called person who has the idea that anything or everything may remind him of sex and make that person the average normal person.

If you take the views here of people who would read these so-called exhibits in evidence, I daresay that there are many who look at it or read it that will have many different opinions as to whether or not it stimulates their thoughts to lustful desires.

So we must again take this man who tramps from page to page through the law, Mr. Reasonable Man. And I say they have applied it again in the law of obscenity by saying that the average normal person must be affected by this.

Most certainly if we take, for example, this exhibit entitled "Tina's Torture"—I don't know if the court has looked at it or not——

The Court: I haven't looked at any of the exhibits.

Mr. Maddox: "Tina's Torture" is a series of cartoons that set forth a victim who apparently is caught by some group. We don't know whether they are outlaws or not, [fol. 174] that isn't apparent. But anyway there are representations of Tina being tied up and being subjected to cruelty. In these so-called cartoons Tina at no time is

naked, nor are any of the other persons in the cartoons naked; it is merely a representation in the cartoon that Tina is subject to abuse, to torture and torment.

Most certainly we could all say, having had some knowledge, that that particular bit of cartoon strip might appeal to a certain person. Now, it wouldn't appeal to me and it wouldn't appeal, I am sure, to anyone in this courtroom, because I don't think anyone here has the tendencies that might be indicated as sadistic, nor does it appear that it could appeal to a person who is a masochist. nor does it appear that it might be such that it might appeal to a person who likes black such as Tina wears in these particular cartoons.

I am making this statement to the court because if we go to each one of these exhibits and say that this particular exhibit may appeal to a person who is a sadist, then we are ruling out Mr. Average Person who must read it. And as I state in my memorandum of authorities in these decisions they say that we cannot in the law of obscenity cater to those who are depraved or who are abnormal, because there is no practical application of the law.

If your Honor please, I am not going to go through all of these exhibits, but I want to state now that we have as [fol. 175] Exhibit 1 a group of books, and those books are small, and they have very lurid and inflammatory titles. And reference may be made to those books by looking at People's Exhibit 3, wherein these books' titles are set forth, and, without a doubt, if a person would read those titles, why, they would immediately believe that they were going to read something that was lustful and would involve secret and perverted practices.

I point out that the law has never been that a title in itself, that is, the wording itself, was sufficient to be obscene unless it involved abusive language, of course, such as profanity. And nowhere are any of the particular titles here designated to be of a nature that involves profanity. Most certainly they would arouse the curiosity of a person who reads them.

The law has been and it is set forth in this Wepplo case, and it cites certain other decisions such as Commonwealth vs. Eisenstadt, which is a Massachusetts case, that a book

or a part of a book must not be taken just in itself. Now, the whole book need not be read, but just the title of it or a page is not sufficient to call an entire volume obscene. So the fact that these books here are introduced in evidence doesn't in any particular establish that they are obscene except by a so-called innuendo or an implication because of their titles.

[fol. 176] Now, if your Honor has to read all that, it is certainly going to be a task that I wouldn't have this court or any court undertake. Therefore I suggest that in examining these exhibits here we look at the exhibits and apply the test as to whether or not they, in themselves, that is, the photographs, the cartoons, would, to the average person, stimulate lustful thoughts and desires. I fail to see where they would do that.

Our position is this: that under the Penal Code, before the defendants can be convicted it must be established that these exhibits are obscene under the law, and my memorandum sets forth the rules.

Now, what do some of the cases say as to the establishment or the burden of proof as to obscenity? They say this: that where there is an uncertainty there must be some social or there must be some psychological or medical testimony to establish the fact of obscenity, because the court is not an expert. The court cannot take judicial notice that certain exhibits here may or may not appeal to a sadist or one who practices onanism or any other perverted or sexual practice. That hasn't been introduced here. There has been no testimony here to establish that any of these exhibits would arouse any particular individual at all.

What has happened is this: The vice officers have gone out and, pursuant to a search warrant, have taken certain objects and exhibits and brought them before this court. And might I add that I believe Sergeant Bridges said they [fol. 177] took several thousand. And out of several thousand we now have before this court possibly 28 to 25 exhibits. They are intending to have this court believe that these exhibits out of all that many thousands indicate that the defendants here willfully and lewdly are conducting a business of operating this type of a mart for the sale of obscene literature.

If your Honor please, the case falls. There is no testimony here from any expert or from any source whatever that this particular material is obscene in itself. The ordinary matters that any normal average person could decide to be obscene are not presented here. There are no photographs of women or men in the nude showing pubic hair; there are no erotic poses; there are no combined poses of men or women; there is nothing here in the way of photographs, there is nothing here at all that to the average normal person would excite that person to lascivious thoughts.

I have examined this evidence, and counsel has examined this evidence, and if the court desires to examine this evidence that must be done. But I am trying to prevent the court from going into this whole detail here, because, if your Honor can understand the law further—and I know that you can—if it is decided that your Honor believes that this particular bit of evidence is obscene, the People still [fol. 178] have to go further. They must establish that the defendants willfully and lewdly held themselves out and sold this particular merchandise. That is the Wepplo case in effect: that, even though the subject matter may be obscene, the defendants must willfully and lewdly sell and offer to sell this particular merchandise.

I submit, your Honor, in honesty and in candor, that if the People desire to prosecute this type of offense there are means of obtaining evidence. They can answer the ads. They would like the court to believe that this defendant and his wife are conducting a business here that is a menace to the community, that they are proselytizing youth. They have introduced a letter here, which I know has only been received for a limited purpose, namely, to show the operation of the business. Yet, if your Honor please, they could secure this information by answering ads; they could send someone to buy this merchandise and bring it into court and testify that on such and such a day that person received through the mail such and such an advertisement or brochure. He could testify, "I filled out, in compliance with what was stated on this brochure, information of what I wanted, and I then received in the mail ten days or two weeks later the following merchandise." They could come into court and they could tie up the brochure with the exhibit. And

that has not been done here. There hasn't been anything [fol. 179] done here constructively except to show that the defendants possibly were in possession of a warehouse, that they operated a place of business on Melrose Avenue. And to go further, if your Honor please, the detectives, the Vice Squad, went out to Los Angeles, out of the jurisdiction of this court, and went into these defendants' home. They went through their personal effects. They stayed there from eleven o'clock until three in the afternoon, and they came out with several exhibits, and one of which they have tried to tell the court the defendant Alberts may have destroyed. And if he did destroy it, so what? It wasn't obscene. This one particular exhibit that the defendant Albert is alleged to have destroyed is a photograph. Now, in Parmelee versus the United States, which is set forth in my brief, and in a local proceeding here in this court, Judge Byrne decided that the Marilyn Monroe photographs were not obscene, and a nude in itself was not obscene. So that the defendant is alleged to have destroyed a nude, although they haven't proved nor have they established that that particular potograph was in the warehouse on Melrose Avenue. They haven't tied up any of this.

I submit under the law that the defendants should not be required to present evidence on this, because the People have failed to substantially establish the corpus delicti: first, that this material is obscene, because they have failed to produce an expert that will so testify, and that the court [fol. 180] has no right to take judicial notice of the conclusions of police officers; also that under these cases I have set forth here, and the United States Supreme Court through federal decisions have ruled, that there is a certain norm in a community, a certain standard, and in one community what may be obscene may not be in another; depending again on this average individual.

I would like to point out, your Honor, that these defendants are operating a business, if that evidence so establishes the case, here in the Sunset area, on Santa Monica Boulevard, and on Melrose Avenue; that somewhere on Sunset Boulevard they have a Sailor Jock Club within a few hundred yards. And within a radius of a mile or so we have such establishments as Ciro's, where Lili St. Cyr did a

strip-tease and was arrested and subsequently found not guilty, and we have such establishments as the Club Gaiety and Ray Burbon's Club that have catered to homosexual entertainment. We have, within a radius of half a mile of the defendants' place of business, business establishments that employ men who no doubt have calendars in their offices and in their garages and in their manufacturing plants showing Marilyn Monroe in various poses and states of nudity.

Now, if your Honor please, if you are going to follow the law of obscenity, you have to take these rules into consideration. The court can't be influenced by the fact that this is bad taste, that it shocks your modesty, that we are [fol. 181] against it, that the titles most certainly are such that they excite a lascivious idea. The law must go further. I submit, your Honor, that I am interested in good law, and it is quite apparent that these defendants and others do not operate where there are municipal ordinances, because under the municipal ordinances the law states that possession in itself is sufficient; while in a case such as this under the Penal Code there must be this additional proof that what was done was done willfully and done lewdly. And as I have set forth in my memorandum, "lewd," "wanton," and "dissolute," those terms are interchangeable. There has to be some fact here to show that the defendant displayed—that they openly were brazen, that they made no particular restriction about the way in which they advertised.

In this Wepplo case and in other Municipal Court cases where the defendants have been charged under a municipal ordinance, they have maintained bookstores and bookstands, and there the material has been displayed openly to the public on newsstands. And the court there has very reasonably concluded that this is lewd, this is offensive to women who walk by, and offensive to people of fine natures. But here these defendants have a closed door that only can be entered with a search warrant. They mail this matter out and they are in the County of Los Angeles. And I submit that if the People are attempting to drive these facts in and force the facts into the law that do not apply, this [fol. 182] case should resolve itself whereby the court

grants the motion to have the matter dismissed against these defendants. And the very proof, the very fact that the People are attempting to force this fact of obscenity into the law under the Penal Code is evidenced by the fact that they bring in here a fifth count of vagrancy, subsection 5 of Section 647 of the Penal Code, alleging that these defendants are lewd, are dissolute people, that they indulge in lascivious habits in their life, and conduct themselves accordingly.

And how do they do this? By bringing in a conviction that is nearly five years old against the one defendant, David Alberts, that he plead guilty to a violation of subsection 2 of Section 311 of the Penal Code.

The court should not be burdened with this type of case.

Now, I say something else here that is quite evident. None of the exhibits are tied up. You take these brochures, People's Exhibit 3 here, where it sets forth in flamboyant language and with photographs and with every type of description of the English language, with connotations to the mind, that if a person subscribes to this they are really going to receive something. Well, there isn't any evidence here that any of these items are tied up at all. I think the only evidence we have is by one police officer that he saw a hula dancer that appeared to be somewhat like the one that was in one of these brochures.

[fol. 183] I have known this court to be alert to the evidence, and I don't think I need take undue time in pressing these matters. I have set forth in my memorandum that if the brochure is advertising a nude, Marilyn Monroe, playing cards or in a stag party, that in itself is not obscene. I further state this, that in a previous case before this very court, where a defendant was formerly charged with violation of Section 311, subdivision 2, of the Penal Code, the People attempted to bring in exactly the same evidence. I don't think there is a bit of difference with any of these particular exhibits than there was several years ago. At that time they brought in some alleged photographs that showed women, well, in a tussle—I'll put it that way—and we might very conceivably say that some person might imagine that those particular photographs were appealing to a sadist. We have the same thing here. We have a group

of photographs of women that are apparently in a tussle, rolling about, but again we haven't the evidence or the proof that such fact is that that evidence would appeal to a sadist.

Now, we go a long way in the law when we say that this evidence here is sufficient to convict and to justify the court in granting the People the right to say that they have made the burden of proof. I don't believe they have.

I leave it this way now, your Honor: Under the memorandum that I filed there are authorities. I can't expect [fol. 184] the court to read them all right now. I don't want to be repetitious, but they set forth these rules, and these rules are well established. And most certainly; if the People are going to proceed under the Penal Code, they have to make out a case and not try to bring in the case by implication.

Thank you.

Argument in Opposition to Motion to Acquit

Mr. Nelson: May it please the court, I deliberately refrained from making objection to what appears to me to be an argument of the facts involved in this case in advance of its proper time. However, I want to say that I share the concern for the court's time and the effort it would take to peruse this literature. However, I am of the definite feeling, as I am sure the court must be, that we cannot escape the fact that the court is going to be the trier of the facts in this case, and that the facts have been presented, and regardless of our personal feelings in the matter or our regard for the court and its time, I think that the duty is squarely before us now to decide the case on its merits and not upon an untimely motion by counsel; nor do I think the case should be decided on what the People have not done, if, in fact, there is evidence that we have carried the burden of proof.

Counsel has made reference to the average individual as being the person who has to be offended or incited by this literature. I do not think he can seriously feel that we have failed by failing to produce an average person; for he [fol. 185] knows and I know and I am sure the court knows that you cannot go out on the street and find an average

person. "Average" runs a wide gamut. "Average" can connote anything from bordering on the superior to bordering on the deviate. And who is to tell whether the average person bordering on the deviate, who reads this thing for these things, would slide over into a serious deviation from the norm? And that is the problem we have to worry about.

Counsel has cited in his brief, I notice, a portion of the opinion of Judge Woolsey in the case of the book "Ulysses." It is regrettable that he only cited a portion of the opinion. If your Honor has the opportunity, the volume that has been published for most of the period of time of the publication of this book since the opinion carries in the preface to the book the entire opinion of Judge Woolsey, and I don't think that an excerpt would serve to carry the meaning as it was intended by the judge. It is mentioned in this excerpt from the preface to the book that obscenity deals with something that exploits sex. It doesn't mean that where something casually mentions sex in the course of a discourse upon some artistic subject is obscene, and with that I agree and I am sure counsel agrees. But where in this batch of evidence before us, your Honor, do we find the book "Ulysses"? Nor do I see anything that approaches it. I see titles, pictures, cartoon strips, all of which are directed toward the exploitation of sex.

[fol. 186] Now, counsel has made a point that we have failed to show that these items were being held for sale by these defendants, or for distribution. The sale brochures are in evidence, if your Honor please. On the third open leaflet of People's Exhibit 2, there it says, in what covers practically a third of the page: "It is great. It is new. It is sensational. Tina's Torture. The best bondage serial ever made." And it states the price.

Likewise counsel himself in his motion, if we can call it that, made reference to the books which are on the table here, which are mentioned in this yellow brochure which is People's Exhibit 3 for identification. I fail to see how, when he argues himself that the books that are in evidence are there listed in the brochure, he can say that we have failed in that respect.

In conclusion I think that counsel is erroneous in assuming that the court should not read this evidence, but instead should read his trial brief. I think the only way a conclu-

sion can be reached in this case is for the court as the trier of fact to consider the evidence as presented.

The People most strenuously oppose the motion of counsel.

The Court: Anything further?

Mr. Maddox: No, your Honor.

Colloquy Between Court and Counsel

The Court: Gentlemen, at this time the only matter or [fol. 187] thing before the court to decide is to rule upon the motion of the defendant for a dismissal. Is that correct?

Mr. Maddox: Or for an advised verdict.

The Court: In order to do that, in the opinion of the court, it is necessary for the court to determine from the case as presented by the People whether or not they have presented a case, and I frankly don't see how I can do that merely from reading the brief and hearing an argument or from hearing the oral testimony that has been offered. I feel that it is necessary that the court review these exhibits that have been offered, and I won't go much into the matter of argument.

There has been some reference made to the fact of there being a further requirement that in addition to the matter of obscenity it is necessary that it be shown that it applies, so far as being obscene, to a normal person and not to a depraved person. As to whether or not it incites desires of a sexual nature, sexual desires, I don't care to comment on it at this time.

I will say that as far as the People's case is concerned in satisfying this court that the defendants were engaged in selling or offering for sale or having their possession for sale the exhibits, generally speaking—there are some exceptions, possibly—I am satisfied that they have made their case.

A reference has been made in your argument, Mr. Mad- [fol. 188] dox, to the fact that the officers admitted that they took several thousand exhibits. If I recall the officers' testimony in relation to the matter of exhibits, I think one of the officers said there were some six exhibits besides those that he was offering but they had taken them in quantity.

Frankly I can't see the difference between the People offering in evidence one each, as they have, of, we will say, 10 or 15, or whatever it may be, different items, and offering in evidence 1,000 items, if any or all of those exhibits are obscene and if they are being offered by the defendants for sale and are in their possession for the purpose of sale. I don't think the number is too important.

Mr. Maddox: Well, we made reference to that on the question of lewdness and willfulness.

The Court: Of course, on the matter of lewdness and willfulness, I don't know whether it gets into the Ulysses case or not, but that involved a book, or at least the case I have in mind involved a book in which a bookstore operator or dealer was on trial. I forget the case. It may be the Wepplo case. But in this particular case they held that the defendant was not guilty because of certain wording in the book, and he wasn't required to know what the contents of the book may be.

Mr. Maddox: That's the Fananstein case.

The Court: Fananstein. But that of course is getting to [fol. 189] the matter of the contents of the book. Here we have quite a few books, and here we have quite a few pictures. And, as I say, I haven't looked at any of them yet. I feel that the only way the court can intelligently rule on your motion would be to recess at this time and to take all of these exhibits, and rule on it, if you wish, tomorrow morning at 9:30.

Mr. Maddox: That's satisfactory, your Honor.

The Court: Is that satisfactory with you, Mr. Nelson?

Mr. Nelson: May I ask, off the record, if the defense is going to present evidence upon this in the event of an unfavorable ruling on the present motion?

Mr. Maddox: There will be evidence presented on behalf of the defendants.

Mr. Nelson: In other words, we will be here tomorrow?

Mr. Maddox: Yes.

Mr. Nelson: Yes, that's satisfactory with us, your Honor.

Mr. Maddox: Now, I don't know if this should go on the record or not, and if it does it is all right with me, but I believe, counsel, honestly and sincerely, that the court

should not be required to read some of these exhibits, because you have read them and I have read them, and I think we can agree that some of them, without question, the court shouldn't be burdened with. Now, do you feel that way about it?

[fol. 190] Mr. Nelson: I feel this way, counsel, that should any of these strike the court as you have represented, that they are not worth giving too much attention to, that fact will become immediately appreciable to the court and he will know, and I think the only way this can satisfactorily be approached is to have the evidence looked at as it sits.

Mr. Maddox: I am speaking now of Haldemann-Julius books.

Mr. Nelson: Those little tiny books. And it is dry reading. And I am sure, if you have read them, you would know that it is a fraud on the public to induce them to buy them.

Mr. Maddox: If your Honor, as the trier of the facts, has to read all of that—I am trying to avoid that for the court.

The Court: Whatever your wishes are. I will read them all if you figure they are all properly in evidence as to the issues before the court.

Mr. Maddox: I don't think the court can——

The Court: I don't think the court can read all of them between now and 9:30 tomorrow morning.

Mr. Nelson: I don't think, counsel, it will be necessary for the court to read them all, as you indicate, from cover to cover. There are certain impressions that are gainable from these things at first impression.

Mr. Maddox: All right.

[fol. 191] Mr. Nelson: And I think we are exercising ourselves unduly over something that might not happen. I hope sincerely that it won't.

Mr. Maddox: I can say that I have heard that the judge is a good and avid reader.

The Court: The court will recess until tomorrow morning at 9:30.

(Whereupon, at 3:15 p.m., a recess was taken until the following day, Friday, June 10, 1955, at 9:30 a.m.)

[fol. 192] Beverly Hills, California, Friday, June 10, 1955.
9:30 A. M.

The Court: People versus David S. Alberts and Violet E. Alberts.

Mr. Maddox: The defendants are present and ready.

Mr. Nelson: The People are ready.

The Court: The court is now ready to rule on the motion made by Mr. Maddox yesterday before we recessed, unless either counsel wishes to present further argument.

Mr. Maddox: No further argument.

Mr. Nelson: No further argument for the People, your Honor.

RULING ON MOTION

The Court: At this time the People have rested their case.

In considering the motion made by the defendants, if at this time there was no defense presented, the court would find that as to Count 3, charging a violation of subdivision 5 of Section 311 of the Penal Code, in which the defendants are charged with keeping and maintaining records, recordings and transcriptions intended to be used in producing and reproducing a lewd, obscene song and words, the court finds that there has been no testimony offered in support of that third count.

As to Count 4, charging a violation of Section 647.5 of the Penal Code, charging the defendants with being willfully [fol. 193] and unlawfully lewd and dissolute persons, the case as presented, in the opinion of the court, is one in which the defendants' guilt or innocence of any criminal acts, in so far as the testimony as given is concerned, relates more to Counts 1 and 2, and I am not satisfied that the testimony is such as would warrant a conviction on Count 4.

The court therefore dismisses Counts 3 and 4.

As to Counts 1 and 2 the court finds that the defendants David Alberts and Violet E. Alberts were, on or about the 25th day of February 1955, maintaining a business at two locations in the County of Los Angeles, one on Melrose Avenue, and the other on Santa Monica Boulevard, one a store building and the other in the nature of a warehouse,

and at that time they were selling or distributing or were keeping for sale certain writings, papers, and books, and they were also at that time writing, composing, and publishing advertisements relative to their stock in trade; that as a part of their sales procedure they were distributing brochures which are in evidence as People's Exhibits 2 and 3, and that they were distributing these by mail from their location at 8627 Melrose Avenue.

Now we get down to the real meat of this case, and that is whether or not these writings or papers or books that were being sold and offered for sale or distributed or kept for sale were obscene and indecent, which is the first point [fol. 194] covered by the defendants in this trial brief, which, of course, while we are not yet ready for final judgment, nevertheless relates at this time to whether or not the People have made out their case.

I read this through, and I spent considerable time—all afternoon and quite a lot of time here last night—going through not only the brief but the cases cited, and also reading and reviewing the People's exhibits.

I think first I will just go through your brief, Mr. Maddox, and tell you how it impresses me as to your arguments in the matter.

First, as to the definition you refer to, you say Webster's dictionary defines "obscene" as "offending modesty or decency; impure; filthy and vile."

The Merriam-Webster New International Dictionary defines it as follows:

> "1. Offensive to taste; foul; loathsome, disgusting.
> "2. Offensive to chastity of mind or to modesty; expressing or presenting to the mind or view something that delicacy, purity, and decency forbid to be exposed; lewd; indecent; . . ."

Under the section of the Penal Code involved, namely, Section 311, subdivisions 3 and 4, a necessary part of the People's proof is to show that such writings and so forth are obscene.

[fol. 195] There is also used in this section of the Code the word "indecent."

"Indecent" in Webster's is defined as "Unbecoming or unseemly; morally unfit to be seen or heard; offensive to modesty and delicacy."

Webster's definition of "obscene" includes "lewd," and "lewd" is defined as "Lustful; libidinous; lascivious; unchaste," a synonym for "lewd" being "sensual."

Now, next on page 2 of your brief you refer to the Hicklin Rule in 1868 in England, in which you state that "Whether the tendency of the matter charged as obscenity is to deprave and corrupt the average normal person." You also have on the same page a reference to the decision of Judge Woolsey in the case of United States vs. Ulysses, where he, according to your quote here, states that the meaning of "obscene" is "tending to stir the sex impulses or to lead to sexually impure and lustful thoughts of a person with average sex instincts. It is only with the normal person that the law is concerned."

And I believe in your brief you indicate that there is a question as to whether the court can determine what is a normal person.

Later on in your brief you present certain other situations which you indicate to be analogous. That's on page 8 where you refer to the fact that the court cannot judicially know of gambling or games of chance, and the court cannot [fol. 196] take as a matter of judicial notice the relative effect of narcotics or the percentage of alcohol necessary to be intoxicated, which is, of course, true.

I feel that, as to a normal person, that is, what is a normal person, as long as one of the references you make is to the matter of intoxication, the rule in relation to the driving of an automobile by a person while under the influence of intoxicating liquor in violation of Section 502 of the Vehicle Code—and there are others too which refer to a reasonable person—that it does not require a psychiatrist to determine what is a normal person.

On page 3 of your brief you cite the Parmelee case, in which you quote them as saying: "The question is a difficult one as to which the expert opinions of psychiatrists and sociologists would seem to be helpful if not necessary."

Now, I didn't have that case, but I notice you refer to it on page 4 of your brief, in which you state that "the court pointed out that the individual views of one person are

not sufficient, saying at page 732: 'The question is one to which expert opinions are necessary.'" However, as to the necessity for expert opinions to determine that, you quote People vs. Wepplo, 78 Cal. App. 2d Supp. at 959, in support of your position, and it is quoted on page 6 of your brief, where you say in that case it was not sufficient in order to convict under the Penal Code to prove that obscene [fol. 197] material was sold, but it must also be proved that it was done willfully and lewdly.

But that same case also states as a part of the opinion the following: "Yet the book"—that is, the book which was in evidence—"is obscene if it has a substantial tendency to deprave or corrupt its reader by inciting lascivious thoughts or arousing lustful desires." And they cite several cases, including federal cases, in support of that position. And then the decision continues as follows:

> "The question whether any particular book is obscene or indecent is primarily one of fact to be decided by the jury."

Of course, we are sitting without a jury, and in this case the court is the trier of the facts and of the law in the matter.

It goes on to say here: "The book was introduced into evidence as an exhibit"—well, here, of course, we do have the exhibits, which I will get to in a minute—"and the jury read it. We cannot upset their determination that it was obscene or indecent unless we can say that upon consideration of the book they could not reasonably reach such a conclusion."

Now, that is from the Wepplo case and it is a part of the opinion. So I believe that the court is in a position to review the testimony and the exhibits offered and make a finding as to whether or not the pictures and the books, or [fol. 198] any of the offered testimony is obscene or indecent.

Now we will get to the exhibits. Exhibit 1 consists of a bundle of small booklets. The court will frankly admit that it only read a portion of one of the books in that exhibit, and I believe it was the black and yellow folder.

Mr. Nelson: Yes, Exhibit 3.

The Court: And while the booklets, you might call them, that compose Exhibit 1 are specifically listed in the advertising brochure, People's Exhibit 3 says: "Are ordinary novels too tame for you? Here is exciting intimate reading that gives you that thrill." And then it refers to pocket-size editions, wherein are listed all of the booklets in 3, together with some others.

I would say, from the little bit that I read in one of those books, that if the purpose of this advertising is to impress the persons who are the prospective customers that they are going to read something that is really obscene or indecent or create sexual passions, and so forth, I think they are going to be disappointed possibly as to that particular book. If it wasn't the kind of literature that it is, it would be more in line to go to the Better Business Bureau about false advertising. That Exhibit 1.

Now, Exhibit 4, consisting of a packet of what might be designated or described as photographic copies of cartoons, with three to a strip, and all of them seeming to relate to the title which appears on the first one, namely, [fol. 199] "Presenting Tina's Torture," is described in the advertising brochure which is People's Exhibit 2. I say it is described there, and I don't think there can be any question about the advertisement in that brochure referring to these particular strips; because not only is the advertisement itself entitled, "It's great—it's new—it's sensational—Tina's Torture, the best bondage serial ever made," but there appears in that ad a copy of the very first picture in the cartoon series of a girl bound with ropes and so forth. And it also has another reproduction of one of the other pictures in the series, which is further on in the series. So I believe the court can definitely assume or presume the ad is advertising this serial.

In addition to Exhibit 4 we have Exhibit 6, consisting of 20 packets of pictures.

We also have as People's Exhibit 13 an envelope containing quite a few photographic copies of cartoons, with three cartoons to a strip, entitled, "Madame Olga's Recruits," and also in the same envelope are the negatives of these cartoons.

People's Exhibit 15 consists of six negatives to a sheet, together with some of the prints from these negatives.

People's Exhibit 16 consists of six negatives taped together, together with prints from those negatives.

The reason I have listed all these exhibits together is because they are all along the same line of subject matter. [fol. 200] Referring back again to the ad brochure, People's Exhibit 2, in which is advertised "Tina's Torture," it says, "Best bondage serial ever made." And as the title of the picture indicates, "Tina's Torture," they are all torture pictures.

People's Exhibit 13, "Madame Olga's Recruits" are torture pictures.

The others that I have referred to are pictures of, in each case, two girls, one torturing the other. In all of these cases the girls wear brassieres, usually rather lacy, and short panties, and usually, if not always, black stockings. All of these attitudes depict one binding or torturing the other.

Now, as to those pictures and the offering of them for sale: The brochure, People's Exhibit 2, in which "Tina's Torture" is advertised, consists entirely of pictures or booklets or peepshows and so forth, which, according to the ad itself, is intended for the following purpose—and I quote from the ad: "Men, let's face it There is a lot of sock that can be gotten from adult items dealing with our favorite subject, Sex, but you have got to play by the rules, and that is, restrict these rules for the article. You can get at these hard-to-get stag items if you keep your pledge."

Now, as to offering the exhibits that I have referred to for sale or keeping them for sale: As I said, all of [fol. 201] these are of women who are being subjected to physical torture, which must be offered to the public from the standpoint of satisfying certain sex desires of the buying public.

We find that the definition of "perversion" in Webster's, under number 3, is: "A maladjustment of the sexual life, such that satisfaction is sought in aberrant ways, as in sadism, masochism, exhibitionism, etc."

And again getting to the definition of the word "aberrant" as used in the definition of "perversion," it is defined as "Deviating from the ordinary or natural type; exceptional; abnormal."

I feel that the offering for sale or sale of such things as that is offering something that is obscene to the normal person. It is very desirous to the abnormal person who gets sexual gratification out of torture.

As to People's Exhibit 5, consisting of eight booklets, paperbound, I have not read all of them through. I have gone through some of them to get an idea of what they are all about, and I find that most of them—well, three of them or four of them are by one author, and four others by another author, both of whom, according to the booklets, are M.D.'s. I will now refer to the booklets entitled:

Bestiality and the Law—A resume of the Law and Punishment for Bestiality with typical cases from the Fifteenth Century to the Present.

Bestiality in Ancient and Modern Times.

[fol. 202] The Picture of Conjugal Love.

The Business Side of the Oldest Business.

William Heirens—Notorious Sex Maniac.

Petting as an Erotic Exercise.

Male Homosexuals Tell Their Stories.

Female Homosexuals and Lesbians Tell Their Stories.

Questions and Answers about Oragenital Contacts.

Now, as to the booklet on "Petting as an Erotic Exercise," the word "erotic," according to Webster's dictionary, is: "Of, pertaining to, or treating of, sexual love; amatory.

"2. Strongly affected by sexual desire; as, an erotic person."

Now, all of these booklets are written by, we assume, two M.D.'s—no, only one of them is an M.D. I don't know whether the other, named Caldwell, is an M.D. The other author is Niemoeller.

As you read these books, the titles are so worded as to indicate that they are meant really for assistance of those who are interested along medical or scientific or psychological lines, to give a history or background of these subjects merely for the purpose of serious consideration by those persons who would have reason to consider them seriously. But is that the purpose for which they are being offered in the advertising brochure, People's Exhibit 3?

[fol. 203] We find that the first page of that advertising brochure reads as follows in large letters: "Banned by Bigots Who Cannot Stand the Meaning of the Word 'Sex.' But Available To You If You Hurry." Then there is below that a statement in the form of a letter on the subject of uncensored books, which ends, "Cordially, Male Merchandise Mart." And in that letter it says: "Note: We make every possible effort to prevent these books from reaching young people or persons who would use them for the fulfillment of indecent desires."

In other words, it is recognized here that certain persons would use these books for the fulfillment of indecent desires. It is also recognized here that evidently the books should not reach young people. I know of nothing that says that because a person is young he is not normal.

Now, a young person can be as normal and I believe can be recognized as being as normal with relation to matters of sex as an old person. And yet the pamphlet itself recognizes that fact, that everything in this pamphlet that is advertised, they are making every effort, every possible effort, to prevent these books from reaching young people or persons who would use them for the fulfillment of indecent desires.

Now, as we look through this pamphlet, let's consider whether or not this pamphlet is being circulated to prospective customers who would be interested in these books and [fol. 204] booklets from the standpoint of serious study of the subjects. But what do we find? As we look into this pamphlet further, it says: "Books on every angle of sex. Learn more about sex to get more out of life. For obvious reasons we cannot advertise these books through regular channels, so be sure to order by number." And it lists these books and others; that is, these books which constitute People's Exhibit 5, and others. But, so that there may be no question as to the type of trade to which this pamphlet appeals, it also has the following ad in it:

"Are ordinary novels too tame for you?"

Now, that gets back to those pocket-sized editions, People's Exhibit 1, which I have already referred to. Also there is advertised here: "Sex in Prison."

Then there is another one here showing one nude girl running and another one lying down. It says: "Wild French Cartoons. You'll giggle . . . you'll gasp . . . you'll pop an eyebrow . . . for these are the no-holds-barred Frenchy cartoons you've heard so much about."

I don't think they would be sending this to a mailing list of doctors or psychologists who were interested in the subject matter covered by these booklets from a serious standpoint.

Also they have reference to the "Flimsey Report—An illustrated report on sexual behavior in the female that's outselling the Kinsey Report itself."

[fol. 205] They also have reference to "French love stories, racy, risky—as only the French know how." So you can see to whom the defendants are appealing in this ad.

However, getting back to the booklets themselves, as to whether they in themselves are obscene, the court would hesitate in saying so because the books in themselves, I don't believe are obscene, though there is much in these books which in the hands of persons who are desirous of having their lustful passions aroused, they would get a lot of valuable material out of them.

Now we come to Exhibit 9, consisting of five bound books. The court has not read all these books, but in that connection I again refer back to the decision in the Wepplo case which says that you must consider the book as a whole in determining whether the law is violated. But this does not mean every page must be of the character described in the statute. You decide not by counting the pages but considering the impression likely to be created.

Now, I refer to one of these books, entitled "Witch on Wheels." This is about a young girl who, in the beginning of the book, I believe, is either 16 or 17 years of age. And it starts right off, and page after page—I don't believe there is a page here that doesn't bring out some reference to her breasts or her legs and the rubbing motion of her leg against her thigh—page after page after that. And, incidentally, it is interesting in this book on page 17 to read [fol. 206] from this book one paragraph. It seems as though she worked in a post office and had just delivered a

packet of books to an older man, and had gone to his home to do it. It says:

> "Surprised by her unexpected candor, Mr. Fuller sat shock-still, the cup balanced on his leg. Darlene tabled her empty cup, and avidly tore open the parcel. Then she ran a finger over each book as she read the titles:
>
> 'Sex Happiness.
> 'Homosexual Neurosis.
> 'Psychopathia Sexualis.
> 'Sexual Aberrations.
> 'Our Sex Life.
> 'Bi-sexual Love.
> 'Sex Satisfaction.
> 'Sex Technique.'"

I merely refer to that, and it is interesting because in this very book it refers to the man and the girl being interested in the very type of books or pamphlets that we have in evidence.

Within the first three or possibly four paragraphs of that book this 17-year-old girl has made advances to men—I say "advances"—she has so conducted herself as to lead them up the point of intercourse, although I don't think it was until the fourth chapter that she actually had intercourse [fol. 207] with one of the men.

I assume that I could probably turn this book and open it at almost any page and find something that relates to sex in a manner which, in my opinion, is lewd and obscene.

Another one of the books is "Snow Job." It is the same here. This relates to an American soldier overseas. I have lost track, but again I would say that there is vividly described in each of the first three to four chapters the conduct of this soldier, each time with a different girl, leading up to the act of intercourse. And I suppose I can go through the rest of the book and continue to find references to sex, because that definitely seems to be what it is for:

"Lingering kiss on her lips." I merely just glance on: "Leave the light on. It is just more cozy."

I mean, I can open it at random and find something on almost every page. And in my opinion it shows what the purpose of that book is.

"She Made It Pay" is the title of one of the other books. This goes into a most vivid and lengthy description of the conduct of a couple, a white boy and, I believe, a colored girl leading up to a most vivid climax.

After I finished that I started to read the next chapter beyond those chapters, and I found that it starts off about two girls who are lying in a cozy bed, one girl gazing at the other, and that is about two homosexuals.

[fol. 208] I think that's enough as to the books. The title of one of the others is "Pleasures of the Torture Chamber," which gets back to the idea of sadism, and the other one I won't make reference to again because I have already done so.

Exhibit 10 consists of ten separate issues of a magazine entitled "Good Times." I am not going to comment on them for his reason—and I may be wrong in my notes as to what happened—but there is nothing to indicate that these particular magazines were being sold or offered for sale or were in possession for the purpose of sale.

No. 11 is another bound book, and it was separated from Exhibit 9 because of the fact that there is in this book a yellow printed slip which reads:

> "Important Notice: Due to circumstances beyond our control it was necessary to make substitution in your order. When we do so, we always substitute an item of a more select nature. We have done so in this case."

This book is about a psychiatrist who is using his ability in the touching of certain nerve centers, and so forth, to develop a sexual desire in any woman. Up to where I read it he had used it twice. I didn't go beyond page 49. And in that case it goes right on through to the final act and for a while afterward, and I consider it obscene.

[fol. 209] Referring to the stereo-views which are People's Exhibit 12, mentioned in one of the two brochures, there was a stock of these on the premises, and each box contains a stereo-viewer together with the slides. Each of these slides is that of a nude girl.

In the brief, reference is made that, as a matter of law, nudity in and of itself is entirely proper, and there is a citation that "Nudity in art has long been recognized as the reverse of obscene"; which is right, and the court goes along with that.

But let's consider specifically four of these slides and see if this is what would constitute art.

One of them is a girl, a nude girl kneeling, with one of those rubber ducks between her legs.

There is another one of a nude girl facing the camera, and there is a table or a counter before her on which there are two champagne glasses, and she has one breast in each of the two glasses—large breasts.

There is another nude girl who is lying in bed, wearing black lace stockings and gloves, in an unusual pose there. I think there has been comment made by artists as to what is the difference between art and obscenity, and I think one of them is putting stockings on a nude. However, skip that.

The next one is a nude girl facing toward the camera and looking over the top of a tennis net, and hanging over [fol. 210] the net on the camera side are her breasts, two very large breasts.

In my opinion, that is obscene.

People's Exhibit 14 consists of negatives, with four pictures to a page of prints from the negatives, each of two girls, and in each case one girl is whipping the other.

Mr. Maddox: Your Honor, may I interrupt for one moment so that I can be certain about something?

You referred a moment ago to the red-and-black circular and then I believe I understood the court to state that the slides were not connected to that circular. Did you make that statement?

The Court: I thought they weren't; they may be. But I glanced quickly at this, and I didn't see it.

Mr. Maddox: Well, your Honor made that statement, and that is why I wanted to be certain that I am following the record.

The Court: Do you wish to correct that?

Mr. Maddox: No, I just wanted to understand the court's position.

The Court: That's right.

Mr. Maddox: The stereo-view lens is not then on the red-and-black folder?

The Court: I do not think it is. It is on one of them.

Mr. Maddox: There is, your Honor, reference made to [fol. 211] a type of viewer, and there are two photographs—I mean purported pictures—there of women in the semi-nude. And do I have——

Mr. Nelson: This is on the same side of the page as "Tina's Torture," near the bottom of the page.

The Court: Yes. It says, "What a deal: Three-dimensional plastic stereo viewer plus pictures, pictures, pictures."

But as to connecting these particular pictures up to that ad, I don't know.

Mr. Maddox: I see. That's what I wanted to be certain of.

The Court: Yes, because it refers to these by numbers. No. 1 is: "Cute! but oh, my!"

2: "She knows her way around."

But I have no way of knowing that this refers to the specific slides that have been presented in evidence.

Now, as to that particular exhibit, it again is in the field of torture or spanking, and what I have already said about the other torture exhibits would apply here.

Now, as to Exhibits 18 to 23, in so far as they are exhibits of books or booklets or pictures, etc., I don't think it is necessary for the court to go into that. Those are the exhibits that were discovered at the residence on Strathmore.

So the court definitely is of the opinion that there has [fol. 212] been enough material presented to this court to satisfy the court that there is obscenity in some of it at least.

The court having found that there were obscene pictures and books in the possession and offered for sale by the defendants as charged, the next point that we must consider is whether they knew they were of an obscene nature, and did they, regardless of that, willfully and lewdly sell and offer for sale such material.

I don't think it is necessary for the court to take much time to express its opinion in that respect. The two brochures, in addition to the third brochure, which I have not

made reference to, which is People's Exhibit 22—but the two brochures that I have been referring to, People's Exhibits 2 and 3, clearly indicate what the defendants had in mind when they offered this merchandise for sale. As I said before, they were not offering these books for sale for the serious purpose of studying sex life by psychiatrists or doctors or whoever might have reason to consider it, but all the advertising, each and every one of the ads, is so worded as to create not only a desire for people to read this spicy stuff or look at this lewd material but, in my opinion, to excite these desires.

There is no question but that these defendants knew the contents of the books and pamphlets and that they did, with full knowledge of what those contents were, and commercializing upon that very fact, carry on their business of [fol. 213] offering them for sale.

So the court has gone into this rather at length to let you know what the court's position is, as the case now stands, and the court denies the motion.

It is now 12:00 o'clock and we can adjourn until 2:00.

Mr. Maddox: Very well, your Honor.

The Court: Are there any witnesses to be ordered back?

Mr. Nelson: None for the People, your Honor.

The Court: Any witnesses for the defendants?

Mr. Maddox: No. No witnesses to be ordered back.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 214] Beverly Hills, California, Friday, June 10, 1955, 2:00 P.M.

The Court: People versus Alberts. You may continue.

By the way, Mr. Maddox, before continuing I would like to make one further comment concerning your trial brief. In that brief you make reference to a previous case that was in this court involving the same defendants, and you say, "it was the opinion of the Court that as a necessary element of the corpus delicti printed and picture material

being the subject of sale and advertising must be identified and related to advertisements and brochures."

And also you make reference to the fact that the City of Los Angeles does have a certain ordinance by which it is a misdemeanor to merely have possession without sale or offering for sale, which, of course, is true as to both the case that was in court and as to the city ordinance.

I may say, however, that naturally each case stands on its own feet, and the fact that the court had a prior case in this court involving matters of a similar nature would have no bearing on the case before the court now.

In so far as the reason that the court ruled as it did on the other occasion is concerned, that was because I didn't feel that the People had made a showing, which in my opinion on the case up to this point they have.

As to the city ordinance, we do not have such an ordi- [fol. 215] nance, and I will be frank to say that several years ago, and at approximately the time of that former case, I attempted to institute action that would result in the adoption of a county ordinance; but evidently I was unsuccessful and it wasn't adopted. And it may be as you say, that if there had been such an ordinance adopted we wouldn't be in court today here on this case. But, of course, that is not what the court must decide this case on; it must decide it on whether or not there is a violation of Section 311 of the Penal Code, and the court is not going to try to stretch Section 311 to take the place of an ordinance that has not been adopted.

I did want to comment on that other case.

Mr. Maddox: Very well, your Honor.

The Court: You may proceed.

Mr. Maddox: Mr. Fleishman, will you take the stand, please?

Stanley Fleishman, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

The Witness: Stanley Fleishman.

Direct Examination.

By Mr. Maddox:

Q. Mr. Fleishman, you are presently a member of the [fol. 216] law firm of Brock, Easton & Fleishman, is that correct?

A. That's true.

Q. And your offices are maintained in Hollywood at 1741 Ivar Avenue, is that correct?

A. Yes.

Q. Is Mr. Brock a former Superior Court Commissioner?

A. Yes.

Q. And you yourself are in active practice of the law, is that correct?

A. That's so.

Q. Of course you are a member of the California State Bar?

A. Yes.

Q. And are you also a member of the New York Bar?

A. I am.

Q. In what field of practice do you give your endeavors to clients?

A. It is a pretty general practice with, I suppose, a specialty in cases relating to post-office matters.

Q. Do you appear in court on frequent occasions?

A. Yes, I do.

Q. Do you know Mr. and Mrs. Alberts, the defendants, who are seated here at the counsel table?

A. I do. They are clients of mine in postal matters.

Q. How long have they been clients of yours in postal matters?

[fol. 217] A. On and off since 1950 or '51.

Q. During this time have there been any arrangements with your office or yourself on a retainer basis, or do they merely consult you occasionally?

A. At the present time they are on a retainer, and have been so since, I believe, October last.

Q. I see. It is a fact, is it not, Mr. Fleishman, that on one occasion you went before Justice Douglas of the United States Supreme Court in the matter of these defendants, is that right?

A. Yes; it was involving the Male Merchandise Mart Company of theirs.

Q. From the fact that you are in this business and you did go to the United States Supreme Court and have handled matters, I assume you know of the business that the defendants are engaged in?

A. Yes, I am familiar with it.

Q. What type of business would you say they are engaged in?

A. It is a mail-order business.

Q. And other similar businesses?

A. Certainly.

Q. Mr. Fleishman, has Mr. Alberts consulted you at different times concerning the mailability of any items and generally as to your legal opinion respecting obscenity under the law?

[fol. 218] Mr. Nelson: Your Honor, to which I shall object both generally to this line of questioning and specifically to this question on the ground that any advice or opinion which Mr. Fleishman has given or will give in the future, or opinion which he will give in this courtroom, is entirely immaterial to the proceedings before this court.

Mr. Maddox: I would like to be heard, your Honor, if I may.

The Court: You may.

Offer of Proof and Rejection Thereof

Mr. Maddox: It will probably save a lot of time if we can have this straightened out now.

It is my position, if the court please, and following your ruling involving the law on this, that if any merchandise that Mr. Alberts or Mrs. Alberts had was obscene and they knew it to be obscene, and, regardless of the knowledge of obscenity, advertised such material, irrespective of the manner of advertisement, that they would be acting lewdly, lawlessly, and wantonly. I believe that's the only conclusion the court can arrive at from reading the Fananstein case and the Wepplo case.

Now, it is our position, therefore, that the question of specific intent is a necessary ingredient here of the corpus delicti and must be established beyond a reasonable doubt.

Therefore it is the defendants' position that if these defendants acted as they believed themselves to be acting, lawfully, in such matters, they then did not have the specific [fol. 219] intent to advertise or disseminate through the mails, by brochure or otherwise, obscene matter. I think this is the very essence of the law in this matter, the specific intent involved under the Penal Code.

Now, regardless of whether or not a person may be mistaken in his belief or may have misunderstood certain advice, if they sincerely believed and were acting according to their best conscience in believing that they were not doing wrong, I say they do not have a specific intent to be lewd. That's our position here.

Mr. Nelson: May I be heard briefly, your Honor?

The Court: Yes.

Mr. Nelson: It strikes me that the point of this question is not whether they had a specific intent to do the act of which they are accused here, but rather whether or not they had a specific intent to violate a law and were advised of the law on the matter. And certainly it is not required that there be a specific intent to violate a law.

The Court: The position, then, that you would be taking, Mr. Maddox, is that because they had consulted Mr. Fleishman, who is an attorney and who engages particularly in the matter of advising clients relating to postal matters, that if he stated that this or that or the other is not obscene, why, then they can go ahead and it frees them of willfully, [fol. 220] unlawfully, and with intent violating Section 311?

Mr. Maddox: That, I think, is a pretty broad statement by the court, and I would have to further qualify that, because I don't believe that that would really be a proper way of presenting this in my offer of proof, because I don't think that would be good law.

The Court: Well, you may restate it.

Mr. Maddox: Maybe I can state it with some clarity here.

The Court: What case are you referring to?

Mr. Maddox: People vs. Wepplo. That decision has been previously cited and is in the memorandum.

In that case the defendant sold a book, and I refer to page 966 of the Wepplo decision, paragraph 8 on that page.

Reading the material matter: The defendant who sold the book but did not own the store was asked by her counsel in substance whether she had any lewd intent in making the sale, and an objection of the prosecution to this question was sustained. This was error. A witness may be examined as to the intent with which he did an act when that intent is material.

Citing other decisions, it says: "This is true even where the defendant is the witness and his intent is an element of the crime charged."

Now, here most certainly the element of intent is the subject matter that we must discuss, because under the [fol. 221] Penal Code the acts of the defendants must be willfully and, as we know, lewdly done.

Now, it is not my position that these defendants would just go to a lawyer and get some advice—and they might get some questionable advice—but they have gone to a specialist. And if they acted upon his advice that was reasonable, they can so state on the stand, and my purpose in having Mr. Fleishman appear here is to corroborate the defendants' intent.

The Court: Well, it is my opinion that if some of the material that has been introduced in this court is obscene or indecent, and the court has indicated that it so holds—and the court is acting again in accordance with People vs. Wepplo in that respect—that these defendants in themselves, without legal counsel, are in just as good a position to know whether the matters were decent or indecent, lewd, or obscene or whatever they may be. And I have looked at them, and in my opinion they are obscene, they are indecent, and I don't feel that they can shift the burden of having sold or offered them for sale, or relieve themselves of the willfulness in so far as they are concerned by passing it on to an attorney and doing it on his advice. And I am going to sustain the objection.

Mr. Maddox: Then, your Honor, I want to make a further statement in due respect to Mr. Fleishman: I want to make an offer of proof here that if I would ask Mr. Fleish- [fol. 222] man these questions and he were to answer them, he would not state that the particular material that this court has ruled to be obscene, that he gave advice that it

was not obscene. Most certainly Mr. Fleishman would not testify on those particular items that he advised the defendants that it was not obscene. He is a very capable counsel, and he would not advise any defendant improperly.

The Court: I don't follow you on this, Mr. Maddox. Do you mean that the witness, Mr. Fleishman, has advised the defendants on certain matters, as to writings or books and so forth that they have offered for sale, to obtain his opinion as to whether or not they were obscene, but as to the specific items before the court he did not advise them?

Mr. Maddox: Your Honor, you just stated that we couldn't shift the burden here on a lawyer to say that these things were not obscene, and I didn't want anyone to think that Mr. Fleishman was going to take the blame for any of them.

The Court: Well, I don't know. I don't know the value of his testimony if he didn't advise them with respect to these specific matters.

Mr. Maddox: Well, he has advised as to certain matters, but not as to these specific matters that the court ruled on this morning were obscene. But there are other matters.

[fol. 223] The Court: The court sustains the objection.

Mr. Maddox: So that we save Mr. Fleishman's time and the court's time, may I make an offer of proof here so that the court can rule accordingly?

The Court: Yes.

Mr. Maddox: I would attempt to elicit from this witness and from the defendants that certain particular matters were litigated before the United States District Court involving certain particular items that were subsequently inserted in the circulars and these brochures that have been introduced in evidence here as a part of the People's case; that adjudications were had in the United States District Court by Judge Peirson M. Hall and by Judge William Byrne, and that on one occasion they went to the United States Supreme Court; that these defendants acted upon those decisions wherein the court made certain rulings that nudes in particular of the type that this defendant was selling were not obscene, and that the defendants acted upon those decisions on legal matters that were before the United States District Court, and therefore made up these

circulars and went into business, and have sent the matter through the mail. And after having done so, of course, they were subsequently arrested on this charge.

The Court: You mean that as a part of that case there were specifically in evidence the same pictures and books as they have in this case?

[fol. 224] Mr. Maddox: Not all of them, your Honor, no; definitely not.

The Court: If that is your offer of proof, I sustain the objection.

Mr. Maddox: The witness may be excused.

David S. Alberts, one of the defendants, called as a witness in his own behalf, having been first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: David S. Alberts.

The Clerk: Your full name, please.

The Witness: David Stephen Alberts.

Direct examination.

By Mr. Maddox:

Q. Mr. Alberts, will you state your residence address?

A. 1000 North Palm Avenue, Los Angeles 46.

Q. How long have you lived there?

A. About a month.

Q. And that is subsequent to the time that you lived out in West Los Angeles, is that correct?

A. That's correct.

Q. And you maintain a business here in Los Angeles County?

[fol. 225] A. I do.

Q. What type of business and where is it located?

A. A mail-order business at 8627 Melrose Avenue and a warehouse at 8733 Santa Monica Boulevard.

Q. Is that business carried on under any particular trade name or notation of identity?

A. It is under a corporation.

Q. When you say it is under a corporation, are you a member of the corporation?

A. I am not a stockholder but I am an employee of the corporation.

Q. What is the name of that corporation?

A. A P R Industries, Inc.

Q. Does that particular corporation maintain and operate this business?

A. It operates the sale of these items through the mails, yes.

Q. What part do you play in the management of that corporation?

A. Well, I have various duties, such as revising advertisements in magazines.

Q. Are you an officer of the corporation?

A. No, I am not.

Q. I see. Who are the officers of the corporation?

A. V. E. Stanard, also known as Mrs. Alberts, is secretary-treasurer. Richard Reed is president. I am not [fol. 226] familiar with the vice-president's name.

Q. But in any event, here, aside from any legal fictions, you are in charge of the business over there, isn't that right?

A. That's correct.

Q. How long have you been operating that business?

A. I have operated a mail-order business off and on since 1947.

Q. Well, there were times when you were out of business, is that right?

A. That's why I mentioned "off and on."

Q. How long have you been operating over here at this particular address on Melrose?

A. Approximately two years.

Q. I see. Now, associated with you in the business is your wife, present, and a member of this corporation, and she worked there?

A. Both.

Q. I see. And what is her general duty and what does she do in the business?

A. She maintains charge over the employees and expedites the sending out of customer-orders and takes care of the books and interviews help, and other similar duties of that nature.

Q. Does she operate independently or do you tell her what to do?

[fol. 227] A. I usually tell her what is to be done and she sees that it gets done.

Q. You direct her, then, in her activities?

A. Yes, I do.

Q. She does nothing then at any time except under your direction, is that correct?

A. That's correct.

Q. You have been here during this proceeding and you know of some of these matters that are before the court. Now, we have here certain exhibits that have been introduced in evidence. There are a group of books which the court indicates that it has examined. Some of those books are entitled, "Bitch on Wheels"——

Mr. Nelson: "Witch."

The Court: "Witch."

Mr. Maddox: Pardon me, your Honor.

Q. And also there is "Snow Job" and "She Made Him Pay," and I believe there is one book——

Mr. Nelson: "She Made It Pay."

Mr. Maddox: "She Made It Pay"?

Mr. Nelson: Yes.

By Mr. Maddox:

Q. And another book called "Sword of Desire." Do you know about these books?

A. How do you mean, know about them? You mean I know——

Q. Do you know that these books exist?

[fol. 228] A. Oh, yes.

Q. Have you ever seen these books?

A. Yes.

Q. Do you have these books either in the warehouse or in any of your places where you operate your business, such as the residence or even in the business office?

A. I had some in my business office, yes.

Q. You had some in your business office?

A. Yes.

Q. Do you know the names of the books that you had there?

A. I think it was those books which are in evidence, the "Snow Job"—I don't recall the titles, but the "Snow Job," "Sword of Desire"—those that you mentioned.

Q. All right. There were books here designated as People's Exhibit 9, which were five books, and I have attempted to state their names, and I didn't mean to be disrespectful, but I did state the names as I thought we had them written down. Were those books in your office?

A. They were, yes.

Q. Whereabouts were they in your office?

A. They were in a file cabinet, in a small filing cabinet.

Q. Why were those books in your office?

A. Those books were in my office because I sometime before purchased a job lot of books from the Arco Publish-
[fol. 229] ing Company at a very advantageous purchase price. However, I subsequently had an interview with one of the book salesmen, and in our course of conversation was advised that there was a cloud on one of the titles of the books, namely, "Sword of Desire," so I put a marker in this particular book of the samples I had in my office, to later discuss the matter with my attorney. And until I did so, I did nothing about the sale of the book. But that yellow slip was used as a marker to remind me that this particular book was the one that I had in question. I still had the rest of the books on the side from this same firm until I could get the matter cleared up to my satisfaction.

Q. Now, as you directed the business there, did you at any time direct these books to be advertised or sold?

A. Nowhere do they appear in any of my circularization, nor did I give any directions that they should.

Q. Where did you keep these books?

A. I kept them at the warehouse, but I kept them not on the general sales shelves, but in the storage section.

Q. Speaking of that warehouse, did you have that warehouse and the shelves more or less set up in consideration of what was mailable and what was not mailable, and what you did use in your business? You have just indicated that you put them on a certain shelf.

A. No, I put them on the side; not on a certain shelf. Not on the general merchandise shelves.

[fol. 230] Q. Then it is your testimony here that you have never advertised, nor have you at any time distributed or sold these books independent of an advertisement, is that correct?

A. That's correct.

Q. Do you personally, Mr. Alberts, know of the matter that is contained within the covers of those books?

A. No, I don't.

Q. Have you ever read the books?

A. No, I haven't.

Q Mr. Alberts, there has also been introduced in here as People's Exhibit 12 some stereo-slides and a stereoviewer, if I state that correctly? Now, have you at any time advertised and have you at any time sold any stereo-slides or stereo-viewer?

A. Yes, we have.

Q. Have you at any time examined the slides that you have sold, when you state you sold these slides?

A. Yes, I have.

Q. All right. This morning some reference was made to certain slides, wherein I believe the court stated that the court had read this material and also viewed certain slides, one particular slide where a lady had on some gloves, and I believe she was over some duck, and another one was where a lady was leaning over and her breasts were in some champagne glasses, and there was another slide where [fol. 231] there was a tennis net, and she was exposing herself in a vulgar manner by having her breasts over this tennis net. Were those slides ever sold?

A. Those slides were never sold by me. I can't swear—

Q. Were they in your stock and were they sold?

A. I don't know. I can't swear that they weren't, but I know I would never order them to be put in my stock. How they arrived there I do not know.

Q. These slides were found in this same cabinet, were they not?

A. No, sir, they were not.

Q. Were they any slides or stereo-viewer in that cabinet where these books were?

A: Yes, there were.

Q. Do you know if those are slides that have been introduced here as an exhibit?

A. I am not sure, but I had placed a few slides in my cabinet for perusal later.

Q. As a matter of fact, you were not in the Melrose address at the time that the arrest was made, is that right?

A. That's correct.

Q. Isn't it a fact that you keep this particular cabinet for questionable items there?

A. Definitely.

Q. And that is why the books were there, is that correct?

[fol. 232] A. That's right.

Q. And if any slides were there, were they there for that purpose?

A. That's what they were there for.

Q. Mr. Alberts, who makes up these brochures that have been introduced here as People's Exhibits 2 and 3, No. 2, I believe, being a red-and-white brochure, and No. 3 being a black-and-yellow brochure?

A. Those are made up by an advertising agency.

Q. And what is the name of the advertising agency?

A. Clifford Gill Advertising Agency on Wilshire Boulevard in Beverly Hills.

Q. Referring to the particular material that goes into these particular brochures, where did you get that material? I mean the advertising matter. Do you write it up or is it made up?

A. No, I do not write it up. The advertising agency writes it up.

Q. Is it your testimony, then, that you do not compose any of the material or the writing of the kinds that go into these brochures?

A. I am not a copywriter.

Q. You do none of that?

A. No.

Q. The people that you employ to do this, do they do

[fol. 233] general work along this line?

A. Yes.

Q. Where are they located?

A. On Wilshire Boulevard in Beverly Hills, the same Clifford Gill Agency.

Q. Have they made up brochures that have been introduced here as People's Exhibits 2 and 3?

A. Yes.

Q. Have you read the brochures?

A. I have glanced at them but I didn't read them.

Q. Well, you have glanced at them since the case has been filed?

A. I have.

Q. Before the time that the case was filed did you make any observation or inspection of any of these brochures in any detail?

A. Yes, I did.

Q. Did you do that on more than one occasion?

A. My usual procedure was that I would collect a series of items which I was going to use for a particular mail order merchandising program, have a conference with the advertising agency as to the items I wanted to sell and the price I wanted to receive for them, and they would write up what they call a rough layout, that is, the copy that would appear in the brochure, and outlining figures, words, and headlines. I would then consult with my attorney [fol. 234] about the rough form first, and he would then make any deletions as he saw fit.

I then would submit the revised rough copy back to the advertising agency, and they would make up a final setup in type exactly as it would be printed.

I would then have another or final conference with my attorney on the matter, and if it was then O.K. I would proceed to have it printed.

Q. When you say you had conferences with your attorney, did you seek the advice of Mr. Fleishman?

A. Yes, I did.

Q. Did you also seek the advice of another attorney?

A. Yes, I did.

Q. What is the name of the other counsel that you spoke to?

A. Stanley Caidin.

Q. And he is located here in Beverly Hills, is that right?

A. Yes, he is.

Q. Is there any particular reason that you spoke to Mr. Caidin about this?

Mr. Nelson: Your Honor, I will object to that question on the ground it is irrelevant and incompetent to any of the issues in this case.

The Court: Do you wish to make any offer of proof?

Mr. Maddox: No, your Honor, except to his effort to try [fol. 235] to do this in a lawful manner.

The Court: Objection sustained.

By Mr. Maddox:

Q. Did you at any time take these matters up with the Post Office Department, Mr. Alberts?

Mr. Nelson: The same objection, on the ground it is immaterial, your Honor.

By Mr. Maddox:

Q. Mr. Alberts, there is a list of some 23 books, and the titles of these books are set forth in People's Exhibit 3. Do you know the contents of those books?

A. No, I do not.

Q. Do you have any general knowledge of the subjects those books contain?

A. General knowledge as to what they contain?

Q. Yes, what type of reading material is found in these books. Do you know about the books?

A. Yes.

Q. How long have you been advertising the books?

A. Since February of nineteen——

Q. Approximately. You don't have to be exact on it.

A. I have a date here. Since February of 1954.

Q. Did you act lewdly in advertising these books, Mr. Alberts?

A. No, I did not, because I know of the reputation of the publisher of those books.

Q. Who is the publisher?

[fol. 236] A. E. Haldermann-Julius of Girard, Kansas.

Q. With reference to these brochures, People's Exhibit 3, after you had had this made up and, as you state, sub-

mitted it to certain persons and discussed it, did you act lewdly in sending out through the mails?

A. No, I did not.

Q. With reference to People's Exhibit 2, which is the red-and-white brochure, you state that you had that made up also, is that correct?

A. That red-and-white circular was made up from another red-and-white circular as a direct result of a court proceeding in front of Judge Peirson Hall.

Mr. Nelson: If your Honor please, I move to strike the answer.

Mr. Maddox: I will withdraw it.

Q. My question was whether you made up this brochure. You stated you made up this brochure, and I just wanted to save time.

A. Yes.

Q. Did you follow the same procedure in making up the red-and-white brochure that you did in the green-and-black?

A. Yes, sir.

Q. You sent this out through the mail yourself, or did you direct to be sent out of your establishment?

A. I directed it to be sent out of my establishment.

[fol. 237] Q. And when you did that did you act lewdly?

A. No, I did not.

Q. There is a particular item set forth here in this brochure, called "Tina's Torture." Have you ever read through all of those cartoon strips?

A. No, I did not.

Q. Do you know what they contain?

A. Not specifically, no.

Q. Did you intend to insert them into this brochure for any lewd purpose?

A. No, I did not.

Q. There is also an item set forth here, "Beauty in Bondage." Did you at any time insert that into the brochure for a lewd purpose?

A. No, I did not.

Q. Reference has also been made here to "Olga's Recruits." Did you at any time send out through the mail

that particular group of cartoons or direct it to be done?

A. I directed it to be done, yes.

Q. Did you know the contents and did you read all of the matter and pictures that were set forth in those cartoons?

A. No, I did not.

Q. In keeping this merchandise on Melrose Avenue and in keeping this merchandise in stock on Santa Monica Boulevard did you do so for any lewd purpose?

[fol. 238] A. No, I did not.

Q. Did you advertise any material that we have in evidence here, or at any time while you conducted this business advertise any of these matters, in a lewd manner?

A. No, I did not.

Q. Did you ever distribute, yourself, or direct anyone to distribute any of these items in a lewd manner?

A. No, I did not.

Q. At any time did you ever design or draw or copy or engrave or make any of these particular figures or set them forth for a lewd purpose?

A. No, sir.

Mr. Maddox: You may cross-examine.

Cross examination.

By Mr. Nelson:

Q. Mr. Alberts, you have stated that you did not do any of these acts that are alleged against you for a lewd purpose. Will you tell the court what is meant by "lewd"?

A. To my mind "lewd" means something in violation of the law.

Q. In other words, what you meant when you said you didn't do this in a lewd manner was that you didn't do anything intending to violate the law?

A. No, I meant that was against the law.

Q. And you didn't want to violate the law?

[fol. 239] A. No, naturally.

Q. However, you did intend to send these brochures through the mail, did you not?

A. Did I intend to?

Q. Yes.

A. Yes, sir.

Q. And this was a profit-making venture? That is, you sent the brochures out and you were to get orders to send other things?

A. That's right.

Q. And then you intended to send the other literature out on receipt of the orders, is that correct?

A. Which other literature?

Q. The requests that had been made on the forms that were to come back to you for the merchandise.

A. Yes.

Q. Referring to this little yellow sheet that you inserted, according to your testimony, in the volume "Sword of Desire," what is on that slip of paper?

A. I don't know the exact wording, but it is a form we use when a customer sends in a sum of money and we don't have the particular item in stock, we substitute another item from the catalog with a larger retail value, so that the customer will be satisfied by getting a higher-priced item then, though it wasn't the exact item he ordered.

Q. Were those little slips printed by you or under your [fol. 240] direction?

A. Yes.

Q. Those little yellow slips?

A. Yes.

Q. Is there any of your own handwriting on that slip that you put in the front of the book "Sword of Desire"?

A. I would have to examine the slip.

Q. Do you recall whether or not you wrote upon it?

A. I don't recall.

Q. Mr. Alberts, it is a fact, is it not, that you have been in this and other courtrooms before concerning matters which include the holding for sale of literature of this type? Is that not true?

A. That's correct.

Q. And you have been complained against in these courts as a defendant; is that not true?

A. I have been a plaintiff and a defendant.

Q. But in a criminal action you have been a defendant regarding some of the material, not necessarily the same material, but material of this nature?

A. Yes, I was.

Q. And this has been going on for some length of time, more than five years, would you say?

A. Well, I was arrested on a city ordinance, 41.01, in 1949.

Q. Was that the first time?

[fol. 241] A. That was the first time I was ever arrested.

Q. All right. Now, since that time have you reviewed the stock of merchandise you had on hand to determine whether or not you were going to be violating a law?

A. Yes.

Q. And it is because you felt that you were not going to be violating the law that you say you were not acting lewdly?

A. It is because of receiving certain advice from counsel and certain court determinations.

Q. Wait a minute. You realized that you were pretty close to the line, didn't you?

A. I repeat, it is because of—

Q. Wait a minute. If you don't feel like you can answer the question, just say you can't answer it.

Did you realize that you were pretty close to the line of violating the law?

A. I can't answer that.

Mr. Nelson: No further questions.

Mr. Maddox: May I have permission to ask the witness several questions on direct that I neglected to ask?

The Court: Proceed.

Direct Examination (Continued).

By Mr. Maddox:

Q. There are some 20 packets of pictures here indicating [fol. 242] women tied in a barber chair. They are People's Exhibit 6. Are you familiar with those particular type pictures, Mr. Alberts?

A. Yes.

Q. And you know that they are in your stock?

A. Yes.

Q. Did you act lewdly in selling or holding out for sale those pictures?

A. No.

Q. Did you advertise those pictures in any particular way that you considered to be lewd?

A. No.

Q. There is also the item here of certain girls, which is People's Exhibit 14, and it is designated by the People as "spanking photographs" or such. Did you at any time know what those pictures were?

A. No. I couldn't tell you which ones were which. They were just some rhubarb photos we had in stock.

Q. You say "rhubarb"?

A. "Rhubarb" is a phraseology in our business. It is a tussle. These two girls are tussling, and therefore we call them rhubarb photos.

Q. You have no particular recollection of any particular pictures but there are pictures in stock, is that correct?

A. That's correct.

[fol. 243] Q. Would you say in any of these pictures you acted lewdly in keeping them for sale or in selling them or advertising them?

A. No.

Q. By the way, Mr. Alberts, can you tell us generally how many items you have in stock which you sell?

A. Generally several thousand.

Q. Have you examined all of those items yourself?

A. No.

Q. Do you employ people to do that?

A. Generally, yes.

Q. Who are those people?

A. Well, I employ legal counsel when I think the situation arises, and—

Q. Do you have clerks?

Mr. Nelson: Your Honor, I think I will move to strike that answer on the ground it is not responsive to the question.

The Court: It may be stricken.

By Mr. Maddox:

Q. Who are the people that you employ in your business and what are their duties? I don't mean their names, but generally what are they, clerks?

A. They are shipping room help and they are receiving department help. I don't bother with that particular phase of the business. I have people who are competent to take care of all the particular phases of that particular thing.

[fol. 244] Q. Now, there has been some evidence here about some "Good Times" magazines which I believe were found in your home. Do you know the contents of those magazines?

The Court: They weren't found in the home.

Mr. Maddox: I thought they were found there. I didn't mean to misdirect, your Honor.

Q. They were found at the Melrose address?

A. Yes.

Q. Do you know what those magazines contain?

A. No, I do not. I just subscribe to it because it is published by a competitor, and it is good practice to subscribe to a competitor's publication in order to find out what they sell.

Q. Referring to these items that you have in stock, are they items that you subscribe to?

A. That's my practice. I subscribe to anything and everything and answer all the ads that I can in the magazines which advertise rhubarb or tussle photos and various movies and books and things of that nature, in a research endeavor.

Mr. Maddox: I have no further questions.

Mr. Nelson: Nothing further, your Honor.

You may step down.

[fol. 245] Violet E. Stanard Alberts, a defendant, called as a witness in her own behalf, having been first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

The Witness: Violet E. Stanard Alberts.

Direct Examination.

By Mr. Maddox:

Q. You are the wife of the defendant David Alberts?

A. Yes.

Q. Do you work in the business that Mr. Alberts operates?
A. I do.
Q. You are also there daily?
A. Every day.
Q. Who is your immediate superior?
A. I work with my husband and do as he advises.
Q. Do you have any particular duties that you follow?
A. Certainly.
Q. What are those duties?
A. I am the secretary-treasurer of the corporation. I take care of the bookkkeeping, supervising of help, shipping of orders, and incoming mail, and various duties of that nature.
Q. Will you keep your voice up, please?
A. Yes, sir.

[fol. 246] Mr. Maddox: Counsel, I wonder if, to save time here, I go down all of these items and ask this witness whether or not she acted lewdly—and I believe that she would so testify, that she didn't—if you would stipulate that she would so testify? If so, I would have no further questions to ask this witness.

Mr. Nelson: Yes, I would be willing to stipulate that she would so testify.

The Court: The record will show the stipulation.

Mr. Maddox: You may cross-examine.

Cross examination.

By Mr. Nelson:

Q. Mrs. Alberts, do you receive a salary for your employment or do you receive a share of the profits?
A. I receive a salary.
Q. Mrs. Alberts, would you tell us what the word "lewd" means to you?
A. To me the word "lewd" means to do something that is—to be acting in a manner which would be more or less questionable or otherwise against the law.
Q. In other words, in doing these acts you did not intend to violate a law?
A. No, sir, I did not.
Q. However, you did perform these acts that you did

around the place of business intentionally? That is, you [fol. 247] intended to mail out certain items?

A. Yes, sir, I did.

Q. And to take care of the other items that you testified on direct examination that you were to handle?

A. Exactly.

Mr. Nelson: No further questions.

Mr. Maddox: I would like to ask one or two questions, your Honor.

Redirect examination.

By Mr. Maddox:

Q. With reference to the books here that have been referred to as "Witch on Wheels," "Snow Job," and the others—there are five in number—do you know if you ever mailed those out in the course of your business?

A. No, they have never been mailed out.

Q. They are in stock?

A. Yes, they are, some of them. I don't know that all you mentioned are in stock.

Q. Referring to the slides that were referred to here this morning, which are exhibits where certain women were in poses that the court considered to be obscene, were those particular slides in stock, do you know?

A. I saw the exhibit, and some of them were but some of them were not. Some of them I had definitely not seen before, and I cannot explain how they obtained them at the [fol. 248] so-called warehouse at 8733 Santa Monica.

Q. Did you ever send out in the course of your duties there any slides similar to that?

A. No.

Q. You have examined the slides that you have?

A. Yes, I have.

Mr. Maddox: No further questions.

Mr. Nelson: No questions.

Mr. Maddox: The defense rests.

The Court: Any rebuttal testimony?

Mr. Nelson: No rebuttal, your Honor. The People rest. Does your Honor wish to hear argument upon this?

The Court: It is entirely up to you gentlemen.

Mr. Nelson: I thought we had argued ourselves out in the business of the motion that was made in the middle of the trial.

The Court: That is entirely up to you, Mr. Nelson. If you wish to waive opening you may do so.

Mr. Nelson: I would like to mention one or two things.

(Argument by counsel for the People.)

(Short recess.)

(Argument by Mr. Maddox for the defendants.)

(Closing argument by Mr. Nelson for the People.)

VERDICT

The Court: Considering the defenses presented first as to David S. Alberts, the testimony has been offered to the effect that the five books which compose People's Exhibit 9 [fol. 249] were never sent out nor held for sale there in the stock of books that were purchased by the Alberts when he found out there was a cloud on them; yet one of those books which was offered in evidence as a separate exhibit, People's Exhibit 11, "Sword of Desire," includes with the book as part of the exhibit a yellow slip which Mr. Albert's testimony admits is a form used by his company where they sometimes will send out a substitute for what a person may have ordered, and usually it is something that is more expensive. This slip is in the book "Sword of Desire."

Mrs. Alberts stated when questioned about the matter of these books as to whether they were in stock, "Yes, some of them were in stock."

The defendant has offered testimony that as to the slides offered as People's Exhibit 12, those particular slides which the court described and classified as obscene, they were not being held for sale or offered for sale. And yet the testimony of the officer is that the one presented or the set presented in court as evidence is only one of, I think he said, six or more that he had recovered. The court is not satisfied with the defense that Mr. Alberts presented in that respect, nor with his testimony as to not having any lewd intent. He defined what "lewd" meant to him, and I think that's what it means: a person who will get as close to the line as he can without going over, and if he doesn't go over, why, then he figures that he is within the law. But as

[fol. 250] far as whether or not the particular matter may be lewd and he may be distributing or offering for sale something that is lewd, the fact that in itself it is lewd does not concern him or does not bother him except to the extent that it may result in his being arrested. He has gone through years of experience with this business where the record shows from his own admissions that he has faced this situation on prior occasions. And his own testimony was interesting in the matter of some of the questions that were asked of him on cross-examination by the prosecutor in relation to this matter of "lewd" and this matter of advice of counsel and so forth. He would indicate that he didn't know what the contents of a lot of these exhibits were, and yet his testimony is that he is the one who ran the business; he is the one who evidently purchased the merchandise that was to be offered for sale by his company and by him; he is the one who did that, and it is inconceivable that a man who is doing that would buy in large quantities books or strip cartoons or films or anything else without having read them so that he would know that it was something that would appeal to the clientele that he wanted to reach, the clientele which he attempts to describe in his brochure, People's Exhibit 3, as "mature men of clean minds." And yet in the same brochure he states that they will make every possible effort to prevent these books from reaching young people or persons who would use them in the fulfillment of indecent desires.

[fol. 251] So far as the defense presented by Mr. Alberts is concerned, it has not altered the position of the court expressed when the People rested, and that is that the People have proven their case beyond a reasonable doubt as against the defendant David S. Alberts on Counts 1 and 2.

As to Violet E. Alberts, she is the wife of the defendant Alberts. Everything indicates, all of the testimony and past records of other actions referred to in court here today, that the moving spirit in all of these matters, whether it be local or federal or what it may be, is David S. Alberts. She is in the employ and she is his wife, and I feel that as to her possibly a situation exists which creates a reasonable doubt whether she of her own volition is criminally liable so far as the holding and possession of these items is concerned.

I find the defendant David S. Alberts guilty on Counts 1 and 2, and I find the defendant Violet E. Alberts not guilty as to Counts 1 and 2. Bail exonerated as to Violet Alberts.

Mr. Maddox: If your Honor please, the defendant waives time for sentence and asks leave of court to have this matter continued for sentence, and the defendant waives any statutory time as to sentence. The matter can be put over possibly for two weeks. Today is the 10th.

The Court: The regular sentence date would be on a [fol. 252] Tuesday, the 21st. Is that too soon? That's eleven days.

Mr. Maddox: Yes, your Honor. Would your Honor prefer to have this matter referred to the Probation Department?

The Court: Personally I have no desire to refer it to the Probation Department.

Mr. Maddox: Very well. I concluded that would be the court's feeling. So if your Honor could put it over for at least two weeks, there are some matters that I would like to go into, and I have one trial in the next several days.

The Court: Two weeks from today would be the 24th of June.

Mr. Maddox: That's satisfactory.

The Court: We will continue it to that time, on the 9:00 o'clock calendar on June the 24th. The defendant to remain upon bail.

The record shows that the defendant Alberts waives time for sentence.

Mr. Nelson: Your Honor, concerning the property received under the search warrants, which is in our custody as a part of the search warrants, I wonder if we may have some order as to the disposition of that property?

The Court: Well, I will have to review again the inventory as to just what we are holding.

Mr. Maddox: I would suggest it all be held over until the 24th if it is convenient to have it held that way. Is that all right?

[fols. 253-254] Mr. Nelson: It has been a long time now, so a few days more won't hurt.

The Court: All right, we will bring it up at that time.

(Whereupon, at 3:55 p. m., the trial in the above-entitled matter was concluded.)

[fol. 255] Judge's Certificate to Transcript on Appeal

I hereby certify that the foregoing transcript on appeal, consisting of 152 pages, is full, true, and correct, and the same is settled, allowed, and made a part of the record in this case.

Dated this 12th day of August 1955.

Charles J. Griffin, Judge.

[fol. 256] Reporter's and Clerk's Certificates to foregoing transcript omitted in printing.

[fols. 257-258] State of California,
County of Los Angeles, ss.

[fol. 259] Supreme Court of the United States, October Term, 1956

No. 61

David S. Alberts, Appellant

vs.

State of California

Appeal from the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles.

Order Noting Probable Jurisdiction—January 14, 1957

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is consoljdafed with Nos. 107 and 582 and a total of three hours allowed for oral argument.

"Every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance, * * *

"Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

"Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable, or knowingly takes the same from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"The term 'indecent', as used in this section includes matter of a character tending to incite arson, murder, or assassination."

Note: The Court in its charge to the jury (Record page 579) applied this language as the law applicable to the crimes charged in the Indictment.

An Act of June 28, 1955, 69 Stat. 183, amended 62 Stat. 768, 18 U. S. C. §1461,

"Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, devise, or substance; and * * *

"Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, * * *

"Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

"Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable, or knowingly takes the same from the mails